

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ALTAGRACIA PEGUERO,)
Plaintiff,)
v.)
AMERICAN EXPRESS COMPANY)
and HEALTHEXTRAS, INC.,)
Defendants.)

Civil Action No. 05-10995-WGY

AFFIDAVIT OF COUNSEL

Donald R. Pinto, Jr. says the following of his personal knowledge:

1. I am a member in good standing of the bars of the Commonwealth of Massachusetts and of this court. I represent the defendant HealthExtras, Inc. (“HealthExtras”) in the above-captioned case.

2. Attached as Exhibit A is an exemplar of the initial promotional document that the plaintiff, Altagracia Peguero (“Ms. Peguero”), received in July, 2002.

3. Attached as Exhibit B are relevant excerpts from the deposition of Altagracia Peguero taken on March 15, 2007.

4. Attached as Exhibit C are relevant excerpts from the Rule 30(b)(6) deposition of HealthExtras taken on February 2, 2007.

5. Attached as Exhibit D is a relevant excerpt from the October 4, 2006 report of one of Ms. Peguero's proposed insurance experts, Tim Ryles.

Signed under the penalties of perjury this 14th day of April, 2007.

/s/ Donald R. Pinto, Jr.
Donald R. Pinto, Jr.

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this date.

/s/ Donald R. Pinto, Jr.
Donald R. Pinto, Jr.

Dated: April 14, 2007



Cards

B021:0001

Sample A. Sample
1044 Pulinski Road
Ivyland, PA 18974-1552

Financial Security

You're covered with

up to **\$1.5 Million**if an accident leaves you
permanently disabled.

Dear Sample A. Sample:

You've worked hard to achieve the lifestyle you enjoy today. At American Express, we understand that our Cardmembers' need for financial security and peace-of-mind is a step above the ordinary.

That's why we are pleased to offer you one of the most affordable catastrophic accidental disability plans available today. The Accidental Disability Plan from American Express provides you with **\$1 million** in one lump sum if you are permanently disabled due to an accident and can't return to work. For just \$9.95 a month, you can help guarantee your financial security now and in the future. And, as a special offer, you can increase your coverage to \$1.5 million for only \$3 more per month.

Acceptance is easy. To start your coverage, simply fill out the form below and send it in. Within 10 days, you will receive a Plan Summary and a complete Benefit Plan Description. Review the Plan materials at your leisure. If you are not satisfied for any reason, you may cancel within the first 90 days and receive a full refund of Plan fees. There's absolutely no risk.

With the Accidental Disability Plan from American Express you can prevent a personal tragedy from becoming a financial tragedy. Enroll now, and for as little as \$9.95 a month, you can rest assured that you are protected.

Sincerely,

Anne Schepp
Insurance Officer

P.S. Take a look at this valuable plan for 90 days – risk-free.

For more plan details and additional benefits, please see reverse side.

L-MCT-AD-0302



"Most people don't think about disability coverage until it's too late. Please don't put this off."

— Christopher Reeve

Yes! Please sign me up for the Accidental Disability Plan from American Express that includes other valuable benefits. Please bill my American Express* Card. I understand that I can cancel my coverage for any reason and receive a full refund within the first **90 days**.

Please select coverage and payment option:

- \$1 Million** for **\$9.95** per month (or **\$99** per year) or
- \$1.5 Million** for **\$12.95** per month (or **\$135** per year)
- I choose to pay on an annual basis and save \$20!

() _____ Date of Birth* ____ / ____
Home Phone

Please enroll my spouse for the same coverage I selected above for an additional \$5.95 per month or \$70 per year (for \$1 Million) or \$7.95 per month or \$80 per year (for \$1.5 Million). (Spouse will be enrolled in same coverage as Cardmember.)

Name of Spouse _____ Date of Birth* ____ / ____
MCTA-99-0000001

Sample A. Sample
1044 Pulinski Road
Ivyland, PA 18974-1552
9999 999999 99999

X _____
Please sign here

I understand that if I do not select a benefit option, I will be enrolled in the \$1 million benefit and billed monthly. If I choose the annual payment option, my Card will automatically be billed annually unless I notify American Express to cancel my coverage.

A-MCT-AD-0302

THESE ADDITIONAL VALUABLE BENEFITS ARE INCLUDED WITH YOUR PLAN:

\$2,500 Emergency Accident & Sickness Medical Expense Benefit (per family) — If you, your spouse, or your dependent children are 100 miles or more from your home and suddenly require medical attention as a result of an accident or an illness, we will reimburse you up to \$2,500 (\$500 maximum per family member) per year for co-insurance and/or deductible expenses. If you do not have health insurance, up to \$100 per day of medical care will be paid directly to you instead to a maximum of \$500 per family member per year. Should you use this benefit even once, it could amount to hundreds of dollars in savings.

Medical Care Coordination Benefit — In the event you become permanently disabled, a medical care coordinator will be available to help you evaluate care options and provide guidance and assistance in obtaining appropriate medical treatment.

IMPORTANT DISCLOSURE:

Please read carefully. The accidental disability policy provides you with a \$1 million or \$1.5 million benefit (based on your selection) for catastrophic accident disability situations only and includes a \$1,000 Accidental Death and Dismemberment benefit. **Accidental Permanent Total Disability:** All benefits subject to the terms, conditions, definitions, limitations and exclusions, including pre-existing condition provisions, as set forth in master policy no. 6475 26 11 issued by Federal Insurance Company (Rated "A++" (Superior) by A.M. Best) to Citizens Bank of Rhode Island, as Trustees for G.A.R.D. Trust for the account of HealthExtras/American Express, and as summarized in the American Express Accidental Disability Plan Benefit Plan Description. Written proof of a total permanent disability resulting from an accidental injury which (1) commences within 365 days of the date of the accidental injury, (2) continues without interruption for at least a year from the date the total permanent disability commences, (3) results in the entire and irrecoverable loss of use of both hands or both feet, or one hand and one foot, or the sight of both eyes, or the hearing of both ears, or the ability to speak, and (4) prevents the insured from returning to work must be provided. ***Must be over age 18 and less than 70 to be eligible.** There is no insurance coverage at age 70 or over. Exclusions: This insurance does not cover loss resulting from: an Insured's emotional trauma, mental or physical illness, disease, pregnancy, childbirth or miscarriage, bacterial or viral infection (except bacterial infection caused by an accident or from accidental consumption of a substance contaminated by bacteria), or bodily malfunctions; suicide, attempted suicide or intentionally self-inflicted injuries; declared or undeclared war. This insurance also does not apply to an accident occurring while: an Insured is in, entering or exiting any aircraft while acting or training as a pilot or crew member; participating in military service; committing or attempting to commit a criminal act; being intoxicated or under the influence of any narcotic unless taken on the advice of a physician; participating in any professional sport; or participating in parachute jumping from an aircraft. Pre-existing Condition: This insurance does not apply to Loss caused by or resulting from an illness, disease or accidental injury of the insured person for which medical advice, diagnosis, care or treatment was recommended or received within 6 months prior to the effective date of coverage. A pre-existing condition will not be excluded after 12 months has elapsed from the effective date of the insured's coverage. **Additional Program Benefits:** A \$2,500 Emergency Accident and Sickness Medical Expense Benefit and a Medical Care Coordination Benefit will be provided in your benefit package. **Other Disclosures:** The \$2,500 Emergency Accident and Sickness Medical Expense Benefit is underwritten by Virginia Surety Company, Inc. (Rated "A+" (Superior) by A.M. Best) under Travel Protection Policy HTP00137. Insurance offered through The Sklover Group, Inc., 400 Post Avenue, Westbury, NY 11590. **Not a Medicare Supplement.** Program may not be available in all states. Coverage is effective on the first day of the month following receipt of payment from you. Program available through HealthExtras, 2273 Research Boulevard, Rockville, MD 20850. **Annuity Option:** At the time of benefit payment, you may elect an annuity option arranged by HealthExtras: For \$1 million benefit - a \$500,000 cash payment plus \$5,000 a month for 20 years for a total of \$1.7 million; or for \$1.5 million benefit - a \$500,000 cash payment plus \$7,500 a month for 20 years, totaling \$2.3 million. Payments made for endorsement. This literature is descriptive only. Actual coverage is subject to the language of the master policy as issued.

Program subject to change. This program may be modified, suspended, cancelled or otherwise terminated with notice.

CT.0302



Cards

March 15, 2007

1 Volume: 1
 2 Pages: 1-125
 3 Exhibits: 1-11
 4
 UNITED STATES DISTRICT COURT
 DISTRICT OF MASSACHUSETTS
 5 C.A. NO. 05-10995-RCL
 6 *****
 7 ALTAGRACIA J. PEGUERO Plaintiff
 8 vs.
 9 AMERICAN EXPRESS COMPANY, AND
 HEALTHEXTRAS, INC., Defendants
 10 *****

11 DEPOSITION OF ALTAGRACIA J. PEGUERO,
 12 a witness called on behalf of the Defendant, pursuant
 13 to the applicable provisions of the Massachusetts Rules
 14 of Civil Procedure, before Camille Macomber, Registered
 15 Professional Reporter and Notary Public within and for
 16 the Commonwealth of Massachusetts, at the Law offices
 17 of Rackemann, Sawyer & Brewster, One Financial Center,
 18 Boston, Massachusetts, on Thursday, March 15, 2007,
 19 commencing at 10:00 a.m.

20
 21 SHEA COURT REPORTING SERVICES
 ONE UNION STREET, SECOND FLOOR
 BOSTON, MASSACHUSETTS 02108
 (617) 227-3097
 22
 23
 24

Page 1

1 I.N.D.E.X
 2 WITNESS DIRECT CROSS REDIRECT
 3 Altagracia J. Peguero
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 7 NO. DESCRIPTION PAGE
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 10 3 Copy of American Express bill from March 2003.....53
 11 4 Copy of American Express bill from August 2003.....55
 12 5 Letter From American Express Cards.....58
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 15 8 Copy of Accidental Disability Plan from American Express Plan Summary.....78
 16 9 Copy of Accidental Disability Plan from American Express.....80
 17 10 Letter to Altagracia Peguero, dated October 27, 2004.....84
 18 11 Copy of Accident Protection Plan from American Express Program Summary.....85
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 20 (Exhibits retained by Attorney Pinto)

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APPEARANCES:

2 LAW OFFICES OF KEVIN DONIUS, P.C.
 3 By Kevin Donius, Esquire
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 On behalf of the Plaintiff

5
 6 RACKEMANN, SAWYER & BREWSTER
 7 By Donald R. Pinto, Jr., Esquire
 8 One Financial Center
 9 Boston, Massachusetts 02111
 10 On behalf of the Defendant

11
 12 MULTILINGUAL GROUP
 13 By Erica Noymer, Interpreter
 14 8 Fanueil Hall marketplace
 Third Floor
 15 Boston, Massachusetts 02109
 16

1 PROCEEDINGS
 2 ERICA D. NOYMER, the interpreter, was
 3 duly sworn by the Notary Public to interpret the
 4 proceedings to the best of her ability.

5
 6 ALTAGRACIA J. PEGUERO,
 7 upon production of her driver's
 8 license, being duly sworn by the Notary Public,
 9 was examined and testified as follows:

10
 11 MR. PINTO: The parties have agreed
 12 and stipulated that we will reserve objections,
 13 except as to the form of the question, reserve
 14 motions to strike. The witness will read and
 15 sign the transcript within 30 days under the
 16 penalties of perjury.

DIRECT EXAMINATION

BY MR. PINTO:

17 Q Ms. Peguero, we're going to have an audio tape
 18 as well as a written transcript of today's
 19 deposition. The reason for that is so we will
 20 have a record of any Spanish that's spoken by
 21 the interpreter to you or by you to the
 22 interpreter, because Camille is only going to be
 23
 24

Page 1 - Page 4

	Page 5	Page 7
1	taking down the English. But as I've discussed	1 A Jonathan is 18, and Jeffrey is 12.
2	with Kevin, I would like to try to conduct the	2 Q Does Jonathan live with you still?
3	deposition in English to the extent we can. So	3 A Yes, just for a while because he's living at the
4	I would ask that if you don't understand my	4 college now.
5	question, please tell me, and I will either try	5 Q What college does he attend?
6	to rephrase it in English or ask the interpreter	6 A Worcester State College.
7	to interpret it for you. Then if you're able to	7 Q Jeffrey lives in your household?
8	answer in English, please do so. If you don't	8 A Yes, all the time.
9	feel you're able to, you can answer in Spanish,	9 Q Is there anyone else who lives in your household
10	and Erica will interpret the answer back.	10 with you?
11	A Okay.	11 A Yes, now Hector is living with me, Hector
12	Q Could you tell me your full name, please?	12 Amador.
13	A Altagracia Jacqueline Peguero.	13 Q His last name is Amador with an R at the end?
14	Q Where do you live now, Ms. Peguero?	14 A Yes.
15	A One Shandon Road, Apartment 215 in Dorchester,	15 Q Are you married?
16	Massachusetts 02124.	16 A No.
17	Q How long have you lived at that address? How	17 Q Have you ever been married?
18	many years?	18 A No.
19	A Almost nine.	19 Q Who is the father of your boys?
20	Q Where were you born?	20 A Luis Adolfo Pena.
21	A Dominican Republic.	21 Q Does he live in the U.S.?
22	Q What city or town?	22 A No, never.
23	A Bani, B-a-n-i.	23 Q Does he live in the Dominican Republic?
24	Q What year did you come to the United States?	24 A Yes.
	Page 6	Page 8
1	A 1993.	1 Q Does Hector have any children of his own?
2	Q '93?	2 A Not with me.
3	A Yes.	3 Q Do you know if he has any children?
4	Q Where did you first live when you moved to the	4 A Yes, he has one.
5	U.S.?	5 Q One child?
6	A My first address?	6 A Yes, one child.
7	Q Yes.	7 Q Are you taking any medications this morning?
8	A It's 158 Boylston Street, Jamaica Plain.	8 A Yes.
9	Q How many years did you live at that address?	9 Q What medications have you taken this morning?
10	A Until '97, I think so.	10 A Neurontin and Baclofen and Ritalin.
11	Q In '97, did you move to Shandon Street?	11 Q Do any of those three affect your ability to
12	A No, I moved with my friend at 94 Montebello	12 remember, affect your memory?
13	Street, Jamaica Plain, too.	13 A I think so.
14	Q Would you spell the name of that street.	14 Q Any one of them or all of them?
15	A Montebello.	15 A I think the Ritalin -- no, not Ritalin, sorry.
16	Q Are you a U.S. citizen?	16 The Neurontin does something to me.
17	A Yes, I am.	17 Q Have you noticed when you've taken it in the
18	Q When did you become a U.S. citizen?	18 past that it affects your memory?
19	A July 2002.	19 A I taken more in the last like five, three, four
20	Q Do you have two children?	20 or three months because I was -- my pain was
21	A Yes.	21 increasing, and they needed to increase the
22	Q What are their names?	22 doses.
23	A Jonathan Pena and Jeffrey Pena.	23 Q That's the Neurontin?
24	Q How old are they?	24 A Neurontin, yes.

	Page 9	Page 11
1 Q	Do you know what the dosage is of Neurontin that	1 A I've taken many courses after the one that I
2	you've taken today?	2 received -- what do you say - diploma.
3 A	800 milligram.	3 Q Diploma?
4 Q	Have you ever been convicted of a crime?	4 A Diploma, yes.
5 A	Me?	5 Q That was after your university education?
6 Q	Do you understand?	6 A Yes.
7 A	Yeah. No, never.	7 Q Were those further courses in the field of
8 Q	Do you understand convicted of a crime, what	8 dentistry also?
9	that means?	9 A Yes, everything in dentistry.
10 A	Yes.	10 Q When did you first begin working in dentistry in
11 Q	Okay.	11 the Dominican Republic?
12 A	No.	12 A I started to work, I think it was before I
13 Q	Could you tell me about your education in	13 graduated, because in my country it is no
14	Dominican Republic beginning with high school?	14 problem, you can start to work without
15 A	Sure. Yes, I assisted to the Francisco Colegio,	15 finishing.
16	which is high school.	16 Q So before 1987 --
17 Q	You graduated from that high school?	17 A Yes.
18 A	Yes.	18 Q -- you began working?
19 Q	What year was that?	19 A Um-hmm.
20 A	I think it was '81.	20 Q Were you working in the office of a dentist?
21 Q	Did you take any English courses in high school?	21 A No, my own office.
22 A	No.	22 Q How many years were you doing that before you
23 Q	After high school, where did you attend?	23 came to the U.S.?
24 A	I attended Universidad Autonoma de Santo	24 A It's like since '86. Yes, it was around the end
	Page 10	Page 12
1	Domingo.	1 of '86.
2 Q	How long did you attend there?	2 Q So between 1986 and 1993, you were practicing
3 A	It was six years.	3 dentistry in Dominican Republic?
4 Q	What did you study?	4 A Yes.
5 A	Community dentistry, odontology is the name.	5 Q Why did you decide to come to the U.S. in 1993?
6 Q	Odontology?	6 A Because my family moved here.
7 A	Odontology school.	7 Q Your family had already moved here?
8 Q	Is that a school for odontology or is it a	8 A Yes.
9	general school with different courses of study?	9 Q Which members of your family did you have in
10 A	Yes, it's a general school.	10 mind?
11 Q	But you pursued dentistry for six years?	11 A My parents, my brothers and sisters. And this
12 A	Yes.	12 time I separate from the father of my sons, of
13 Q	Did you take English courses at college or at	13 my children.
14	university?	14 Q Do your parents live in the Boston area?
15 A	No.	15 A Yes, they are living at Salem, Massachusetts.
16 Q	Did you receive a degree of completion?	16 Q Salem?
17 A	Yes.	17 A Yes.
18 Q	When was that?	18 Q How many brothers and sisters do you have?
19 A	It was '87, something like that. '87, '88, I	19 A Five.
20	don't remember exactly.	20 Q Are all of them in the United States?
21 Q	Was your degree, your certificate in dentistry?	21 A Yes -- no, one is living in the Dominican
22 A	Yes.	22 Republic. My other sister is living there.
23 Q	Did you have any other schooling in Dominican	23 Q Are they in the Boston area also, your brothers
24	Republic after that six years at the university?	24 and sisters who are you in the U.S.?

	Page 25	Page 27
1	Q Did you do any work on patients, dental work	1 Q Had you gone to any classroom to study?
2	yourself?	2 A No, I was doing it by myself. After I enrolled,
3	A No.	3 I can go for less than six months, but it's too
4	Q Did you do teeth cleaning?	4 much material. You need to be ready.
5	A No.	5 Q So you had study materials that you studied on
6	Q Were there dental hygienists who also worked in	6 your own?
7	the office?	7 A Yes.
8	A Dental hygienists are different, you know, yes.	8 Q Then you were going to take a board test?
9	Q There were dental hygienists who worked for	9 A Yes.
10	Dr. Carr also?	10 Q And that would tell whether you could go to
11	A Yes, they are dental hygienists, but they are	11 dental school?
12	different person.	12 A Yes.
13	Q What do you call your job at the office?	13 Q Was that test for a particular school?
14	Assistant?	14 A No, it was for general. I can study at any
15	A Yes, dental assistant.	15 university here after I take this test.
16	Q When you came to the U.S., did you investigate,	16 Q Did you take the test?
17	look into whether you could practice as a	17 A No.
18	dentist in the U.S.?	18 Q You didn't end up taking the test?
19	A Oh yes.	19 A I didn't apply because I have my accident. That
20	Q What did you find out?	20 changed my life.
21	A After I arrive to Dr. Carr, I have a lot of	21 Q Do you remember when the test was going to be?
22	information. There are some girl, co-worker who	22 A It was supposed to be in July, I think so, June
23	was trying to get her dental license too,	23 or July of 2003.
24	because she was working with me. And she	24 Q 2003?
	Page 26	Page 28
1	conveyed me to the information, and I started to	1 A Yes.
2	study to apply for my first national board.	2 Q So you were studying for a long time in advance?
3	Q That was a test that you would have to take?	3 A Yes.
4	A Yes, before I go to the university.	4 Q In July of 2002, you were studying?
5	Q So you would have to take a test in order to go	5 A Yes, I started to study in 2002.
6	to the university?	6 Q Do you remember when in 2002 you got the
7	A Yes.	7 materials and began studying?
8	Q Then how much schooling did you have to do?	8 A I think it was -- I don't remember exactly. I
9	A Two years, and another board, and another	9 don't remember exactly.
10	national board.	10 Q When you lived in the Dominican Republic, did
11	Q After the school?	11 you have any kind of insurance?
12	A Yes, while or after.	12 A In my country?
13	Q Did you take any action, any steps to enroll in	13 Q Yes.
14	any course to study?	14 A No, just healthcare, insurance for health.
15	A The first time I was preparing myself, because	15 Q In the Dominican Republic, is health insurance
16	after you apply, they have to send everything to	16 something that you buy privately?
17	you the day before the test, you know, then you	17 A Yes.
18	are supposed to be ready for that, and I was	18 Q You had that kind of insurance?
19	trying to be ready. I'm sorry.	19 A Yes.
20	MR. PINTO: That's okay, do you want	20 Q Any other kind of insurance?
21	to take a few minutes?	21 A No.
22	(Off the Record.)	22 Q Life insurance?
23	Q So you had gotten materials to study?	23 A No.
24	A Oh yes.	24 Q Disability insurance?

	Page 29	Page 31
1 A No.		1 speculate, but if you know...
2 Q Did you have auto insurance in Dominican Republic?		2 A No, I don't remember exactly.
3		3 Q Then you enrolled in Mass. Health?
4 A What?		4 A Yes.
5 Q Car, auto insurance.		5 Q Do you remember getting materials from Mass. Health that described what the health coverage was?
6 A Sure.		6 A Yes.
7 Q Did you have written material about your health insurance in Dominican Republic that explained what the insurance covered?		7 Q Did you read those materials?
8		8 A Sure.
9		9 Q Do you keep those materials at your home?
10 A Yes, I remember I have it there, but I leave it there.		10 A Yes.
11		11 Q Do you keep those materials at your home?
12 Q Similarly, with auto insurance, did you get an auto insurance policy?		12 A Yes, I think so. Yes, I have it.
13		13 Q Do you have a file or a drawer that you keep --
14 A No, there it is different. There it is different.		14 A Yes, I have a file.
15		15 Q Is that for insurance papers?
16 Q What's different about it?		16 A Yes.
17 A They are different from there. Everything is different there from here.		17 MR. DONIUS: Altadecia, I'm just going to ask that you wait until he completely finishes his question before you go onto your answer.
18		18 THE WITNESS: Okay.
19 Q Do you get paper that explains --		19 Q Did you keep Mass. Health continuously from the time you started up to the present time?
20 A Sure, I have paper, yes.		20 A No, because I don't have a confirming before.
21 Q -- what the insurance covers?		
22 A Yes.		
23 Q You didn't have any insurance other than health insurance and auto insurance --		
	Page 30	Page 32
1 A No.		1 Q I'm sorry?
2 Q -- in the Dominican Republic?		2 A I don't have my own apartment, I couldn't have a good record of all of my things because I was living with another person in a room.
3 A No.		3 Q So you couldn't have Mass. Health?
4 Q When you came to the U.S., did you have health insurance when you got here?		4 A Yes, sometimes they throw away my papers, you know, because it was not really my home.
5		5 Q Let me see if I understand that. After you got to the U.S., you enrolled in Mass. Health?
6 A Yeah, I have Mass. Health.		6 A Yes.
7 Q How soon after you got to the U.S. did you enroll in Mass. Health?		7 Q But then you lost the Mass. Health coverage?
8		8 A Oh, yes, I lost for a long time.
9 A After Mass. Health, I just have my disability insurance.		9 Q It was because you were not living on your own?
10		10 A No, it was not for that. I went to the Dominican Republic for a while, and then when I come back, they have send to me the paper for renewing, and I couldn't send it in time, and it was late.
11 Q My question was, after you arrived in the U.S., how many months before you got Mass. Health? Did you get it right away?		11 Q I understand. So you went back to Dominican Republic after you got to the U.S.? You went back to the Dominican Republic --
12		12 A It was just for a few times. I was going to Dominican Republic many times.
13		13 Q For a visit?
14 A No, I don't have any insurance.		
15 Q For a while you had no insurance?		
16 A Yes.		
17 Q How many months or years?		
18 A No, it was not too much, it was just like two month -- no, it was more. I don't remember exactly. I can't remember.		
19		
20		
21 Q But it was a few months, and then you got Mass. Health?		
22		
23 MR. DONIUS: Objection to the form, but go ahead, you can answer. Don't guess or		
24		

	Page 33	Page 35
1	A Yes, for visit. Sometime my grandpa, my father was sick, and my grandma and my grandpa, you know. For many reasons.	1 I keep this address.
2		2 Q How soon after you got to the U.S. did you get a car here?
3		3 A After I came here to live?
4	Q So many times?	4 Q Yes. Did you get an automobile right away?
5	A Yes.	5 A No. I have a car, I think it was in 1997 I have
6	Q How long of a trip did you take?	6 my first car here.
7	A It's hard for me to say how long.	7 Q Did you buy auto insurance for your car?
8	Q Was it sometimes that you were gone for one month?	8 A Sure.
9		9 Q Did you get a copy of a auto policy, insurance policy?
10	A No.	10 A I don't remember. I need to check my file.
11	Q Not that long?	11 Q Do you have a file that you keep insurance policies? Is it a separate file for insurance at your house?
12	A No. I don't remember.	12 A Yes.
13	Q Were there times when you were gone for --	13 Q You understand that insurance is an agreement between you and a company?
14	A Let me see. Yes, one time I just spend the time there. Yes, one time I need to go because I didn't have a place where I can live here, and I need to go back. But I come back a few times, you know. Then I found a place where I was going to live.	14 A Yes.
15		15 Q There's a written contract?
16		16 A Yes.
17		17 Q And that contract spells out or tells you what the company's obligations are to you?
18		18 A Yes.
19		19 Q Yes.
20	Q So when you first got to the U.S., you stayed for a while, and then went back to Dominican Republic for a while?	20 Q Never had life insurance?
21		21 A Never have it.
22		22 Q Have you ever had any other type of disability insurance other than the American Express disability plan?
23	A Yes, I was coming and going, you know.	23 A Before or after?
24	Q During what years were you coming and going?	24 Q Before, while you lived in Dominican Republic?
	Page 34	Page 36
1	A It was not too much because I have to work for my son, I need to have the money for my son. It was many times. I have been there many times.	1 Q Never had life insurance?
2		2 Q No other kind of disability insurance?
3		3 A No other kind.
4	Q But in 1994, were you back and forth between Dominican Republic and the U.S.?	4 Q Before you enrolled in the American Express plan that this case is about, had you shopped for
5		5 A Yes.
6	A In '94, yes, I drive my younger son to his father because they didn't know him, you know. After Jeffrey born, I went there for a while. I don't remember exactly for the time, but I know I remember this time.	6 A Yes.
7		7 Q Before you got to the U.S. did you get a car here?
8		8 A After I came here to live?
9		9 Q Yes. Did you get an automobile right away?
10		10 A No. I have a car, I think it was in 1997 I have
11	Q Was that time a few weeks or a few months that you went back?	11 my first car here.
12		12 Q Did you buy auto insurance for your car?
13	A No, I don't remember exactly.	13 A Sure.
14	Q In 1995 and 1996, did you continue going back and forth?	14 Q Did you get a copy of a auto policy, insurance policy?
15		15 A I don't remember. I need to check my file.
16	A Yes.	16 Q Do you have a file that you keep insurance policies? Is it a separate file for insurance at your house?
17	Q Did you have in those years a residence in the Boston area that you kept?	17 A Yes.
18		18 Q You understand that insurance is an agreement between you and a company?
19	MR. PINTO: Maybe I could use a translation on this.	19 A Yes.
20		20 Q Never had life insurance?
21	Q In 1995 and 1996, did you keep a residence in the Boston area that you would return to when you came back from Dominican Republic?	21 A Never have it.
22		22 Q Have you ever had any other type of disability insurance other than the American Express disability plan?
23		23 A Before or after?
24	A Yes, the same place. 158 Boylston Street. Yes,	24 Q Before, while you lived in Dominican Republic?

	Page 37		Page 39
1	disability insurance?	1	Q Do you have Mass. Health now still?
2	A No, I didn't look because I don't know about	2	A Yes.
3	this kind of insurance before, you know. But I	3	Q Do you today have a file or a place at home that
4	was thinking about it when I saw American	4	you keep information from Mass. Health?
5	Express offer.	5	A Yes.
6	Q But before you saw that offer, you weren't	6	Q Is it the same place that you keep information
7	thinking about it?	7	about your auto insurance?
8	A No.	8	A No, my car insurance is a different place.
9	Q Does disability insurance exist in the Dominican	9	Q You had a place for your auto insurance also?
10	Republic, do you know?	10	A Yes.
11	A I don't know.	11	Q Those are the only two kinds of insurance you
12	Q Before you enrolled in the American Express plan	12	had, other than the American Express plan that
13	that this case is about, were you aware of life	13	we're talking about?
14	insurance?	14	A Can you repeat, please?
15	A No.	15	Q Did you have no other kind of insurance other
16	Q You didn't have any knowledge of what that was?	16	than Mass. Health, auto insurance, and then
17	A No.	17	later the American Express disability plan?
18	Q Did you ever talk to anyone, family or friends	18	A Yes, disability plan. I'm sorry, I need to say
19	about disability insurance before you enrolled	19	something to you. At the time when I have my
20	in the American Express plan?	20	accident, I don't have any health insurance
21	A Before, no.	21	because I was working for Dr. Carr. He doesn't
22	Q How about life insurance, did you ever discuss	22	offer to us any health insurance, and I was
23	that with anyone?	23	earning a lot of money to get the Mass. Health
24	A My older brother sometime told me about that,	24	insurance.
	Page 38		Page 40
1	but I don't pay attention to that.	1	Q You were earning too much for Mass. Health?
2	Q You said what?	2	A Yes, it was too much for Mass. Health, and at
3	A My older brother told me about life insurance	3	this time I don't have Mass. Health.
4	one time, but I don't pay attention to that	4	Q Did you have Mass. Health up until the time you
5	because I have no interest in that.	5	started working for Dr. Carr?
6	Q Why did you have no interest in that?	6	A Yes, they stopped giving to me then.
7	A I don't know, because I see many bad things here	7	Q After you started working for Dr. Carr?
8	about the son or the boyfriend or something like	8	A Yes.
9	that will get the money from this insurance.	9	Q And making more money?
10	Q I don't think I understood that.	10	A Um-hmm.
11	THE INTERPRETER: Express it again,	11	Q Did Dr. Carr offer any benefits, insurance
12	yourself.	12	benefits?
13	A I don't take this kind of insurance because I	13	A No.
14	see in the United States many cases where sons	14	Q Janitronic's, did that offer any benefits,
15	killing the father or the mother or their	15	insurance?
16	boyfriend or their husband or wife is killing,	16	A No.
17	you know, another one, just for trying to get	17	Q Do you remember if you had the opportunity to
18	this money.	18	purchase insurance through Janitronic's?
19	Q To get the insurance money?	19	A I don't know about that.
20	A Yes. And then I say this is dangerous	20	Q Did you ever talk to Dr. Carr about whether he
21	insurance. I don't believe in it.	21	would give you insurance benefits through his
22	Q Besides Mass. Health, have you had any other	22	office?
23	health insurance from any other company?	23	A I asked him one time about it, he say he don't
24	A No.	24	offer it for the employees.

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1	Q I'm going to show you a few documents which are from American Express, and just ask you to look at them, and I will ask you a few questions about them.	1 information?
2	MR. PINTO: Why don't we mark that as Exhibit 1.	2 A No, just by phone.
3	(The document was marked as Exhibit No. 1.)	3 Q They didn't promise to send any information in the mail after the phone call?
4		4 A No.
5		5 Q Did you ever receive any information?
6		6 A I don't remember. I don't remember that.
7		7 Q Do you remember how long you had that protection before you canceled it?
8		8 A No, I don't remember it.
9	Q Ms. Peguero, I would like you to look at this document and take as much time as you need, and tell me if you recognize it.	9 Q Also, on the first page, the entry dated July --
10		10 Did you have something to add to your last answer?
11		11 A No.
12	A (Witness reviews document.) Yes.	12 Q The entry dated July 3, 2002 says, "Credit Secure Services," with a charge of 9.99, what was that, Credit Secure Services?
13	Q Is this a copy of one of your American Express bills from the American Express Company from July 2002?	13 A I need to take this like insurance, like I buy some insurance about that, because I have something from another credit card, like credit protection. I didn't know I need to take care about that like some important insurance like car or like health or like disability plans. I didn't know, I'm sorry.
14		14 Q The entry dated July 3, 2002 says, "Credit Secure Services," with a charge of 9.99, what was that, Credit Secure Services?
15		15 A I need to take this like insurance, like I buy some insurance about that, because I have something from another credit card, like credit protection. I didn't know I need to take care about that like some important insurance like car or like health or like disability plans. I didn't know, I'm sorry.
16	A Yes.	16 Q The entry dated July 3, 2002 says, "Credit Secure Services," with a charge of 9.99, what was that, Credit Secure Services?
17	Q On the first page, if you look on the left at the dates of the transaction, there's a transaction dated July 26, 2002. Do you see that one?	17 A I need to take this like insurance, like I buy some insurance about that, because I have something from another credit card, like credit protection. I didn't know I need to take care about that like some important insurance like car or like health or like disability plans. I didn't know, I'm sorry.
18		18 Q The entry dated July 3, 2002 says, "Credit Secure Services," with a charge of 9.99, what was that, Credit Secure Services?
19		19 A I need to take this like insurance, like I buy some insurance about that, because I have something from another credit card, like credit protection. I didn't know I need to take care about that like some important insurance like car or like health or like disability plans. I didn't know, I'm sorry.
20		20 Q The entry dated July 3, 2002 says, "Credit Secure Services," with a charge of 9.99, what was that, Credit Secure Services?
21		21 A I need to take this like insurance, like I buy some insurance about that, because I have something from another credit card, like credit protection. I didn't know I need to take care about that like some important insurance like car or like health or like disability plans. I didn't know, I'm sorry.
22	Q What is Amex Credit Protection Plan that you were charged \$3.96 for?	22 Q The entry dated July 3, 2002 says, "Credit Secure Services," with a charge of 9.99, what was that, Credit Secure Services?
23		23 A I need to take this like insurance, like I buy some insurance about that, because I have something from another credit card, like credit protection. I didn't know I need to take care about that like some important insurance like car or like health or like disability plans. I didn't know, I'm sorry.
24	A Amex, they asking me by phone -- they say I can	24 Q The entry dated July 3, 2002 says, "Credit Secure Services," with a charge of 9.99, what was that, Credit Secure Services?
	Page 42	Page 44
1	try for a time, and when I want, I can cancel. Then later, I don't have a -- let me say -- enough information for cancel. Then I pay for, like -- I don't remember, for a while, but after I canceled because I say I don't receive any protection, I don't need it.	1 Q That's okay, I'm just asking you a few questions about this Credit Secure Services.
2		2 A Okay.
3		3 Q Do you know what that did, what service or protection that gave you?
4		4 A Yes.
5		5 Q What did that do?
6	Q What did you understand it did? What did it protect from?	6 A But I canceled. I remember I canceled because my statement was coming with a lot of amount, and I say I don't receive any important protection for me.
7		7 Q What did you understand Credit Secure, what was the purpose of that? I understand that you canceled, but --
8		8 A Get my credit protection. I understand what that meant.
9	A For healthcare.	9 Q If you know, what was the difference between the Amex credit protection and Credit Secure Services?
10	Q This Amex Credit Protection?	10 A Because this is a protection plan, the first one. Amex is a different company than security, Secure Service.
11	A Yes, yes, it is for credit protection.	11 Q So did the Amex Credit Protection Plan only protect your Amex card?
12	Q How does it protect your credit?	12 Q
13	A Maybe some person is taking my identity, and that is protection to me on my credit.	13 A
14		14 A
15	Q So your understanding is if someone stole your identity and charged things in your name, this would protect you?	15 A
16		16 A
17		17 A
18	A Yes.	18 A
19	Q This is something that you were told about over the telephone?	19 A
20		20 A
21	A Yes.	21 A
22	Q You got a telephone call from Amex?	22 A
23	A Yes, just a telephone call.	23 A
24	Q Did they say they would send any paperwork, any	24 A

	Page 45	Page 47
1	A I suppose, except for American Express card, my credit.	1 A No, I don't remember.
2	Q Did Credit Secure Services protect something else?	2 Q The next entry, July 5, 2002, for \$99.
3	A It was protecting my security, my whole credit, I think so.	3 A Yes.
4	Q How did you hear about Credit Secure Services? Was that a telephone call or something in the mail?	4 Q It says, "Association Health CA," and then has a long number, "Membership Club." What was that?
5	A It was protecting my security, my whole credit, I think so.	5 A That one I canceled, almost immediately I
6	Q How did you hear about Credit Secure Services? Was that a telephone call or something in the mail?	6 canceled this because when I saw this amount, I
7	A Yes, yes.	7 say, "Oh my god, it's too much."
8	Q You received a phone call from that company?	8 Q What was it? What was the product or the service?
9	A Yes.	9 A Uh?
10	Q Credit Secure Services?	10 Q What is Association Health CA? Why did they charge you \$99?
11	A Yes.	11 A That was one on health insurance. They sold to me through my phone, yes. They called to me to offer that.
12	Q And based on that phone call, you told them that you wanted to try that?	12 Q It was health insurance?
13	A I say yes, yes.	13 A Yes.
14	Q Did they send you any written information --	14 Q At this time, you didn't have other health insurance?
15	A Yes.	15 A It was too much money for me at this time.
16	Q -- after the phone call?	16 Q Do you remember if it was around July of 2002 that you first signed up for Association Health?
17	A Yes, that one, yes, I remember them.	17 A No, I don't remember exactly.
18	Q Did you keep whatever they sent you?	
19	A No, after I canceled, I throw away because I have a lot of paper at home.	
	Page 46	Page 48
1	Q Before you canceled, you held onto whatever information they sent you?	1 Q Was the first thing you ever heard about this a telephone call?
2	A Yes.	2 A Yes.
3	Q Did you read it when it came?	3 Q Or something in the mail?
4	A Yes.	4 A No.
5	Q At that time, you understood what credit secure services was doing for you?	5 Q Phone call?
6	A Yes.	6 A Phone call.
7	Q As you sit here today, what you can remember is that it was to protect your credit?	7 Q Based on the phone call, you said you would sign up?
8	A Yes.	8 A Yes.
9	Q But it was broader than the American Express credit protection?	9 Q Did they say they would send you forms or paperwork?
10	A THE WITNESS: I don't understand.	10 A Yes.
11	Q What is he saying?	11 Q After the phone call, did you receive some paperwork from this company?
12	(Question translated by the interpreter.)	12 A Yes.
13	A Yes.	13 Q Did you keep that in a file?
14	Q The Credit Secure Services protection.	14 A No, no. After I canceled, I throw away.
15	A Yes.	15 Q But before you canceled, you kept that paperwork?
16	Q Do you remember how long you had that protection --	16 A Yes, I keep it.
17	A No.	17 Q Was that in an insurance file or where did you keep it, those papers at your house?
18	Q -- before you canceled?	18 A I keep it in the same -- when I use them, you

	Page 49	Page 51
1	know. When I have some insurance, I can hold	
2	all the papers.	
3	Q Do you have a drawer or a file cabinet? Where	
4	do you keep important papers at home?	
5	A I have it two places. I have one cooler, I	
6	didn't use this cooler, and I put like folders,	
7	in folders. And I have a place who have many	
8	places like this, with some pieces like this	
9	(indicating), but it's more bigger because it	
10	has a cover and it closes, yes.	
11	Q That's what you use to keep important papers?	
12	A Yes, that's the right place where I have it.	
13	Q What other kinds of things do you keep in that	
14	place besides insurance papers?	
15	A Social security papers, SSI papers, Humana	
16	papers, that's my insurance for Medicare.	
17	Medicare, too.	
18	Q Humana is the company you get the Medicare from?	
19	A Yes.	
20	Q If you look back at the American Express bill	
21	marked as Exhibit 1 on July 15th, there's	
22	another charge of 8.95 that says MWI Essentials.	
23	A Where is it, please? July what?	
24	Q July 15.	
	Page 50	Page 52
1	MR. DONIUS: First page.	
2	A Yes.	
3	Q What was that MWI Essentials membership?	
4	A They sent to me, they want to -- no, they didn't	
5	send to me, they called me. All this thing I	
6	buy was by phone.	
7	Q So the first you ever heard from MWI Essentials	
8	was a telephone call?	
9	A Yes, um-hmm.	
10	Q What was their service or product?	
11	A I don't remember exactly. I canceled.	
12	Q But you don't remember what it was that they	
13	did.	
14	A No, I don't remember exactly. I can't tell you	
15	what that's about.	
16	Q Do you remember getting a phone call from them,	
17	though?	
18	A Yes.	
19	Q At the end of the phone call you told them yes,	
20	you would sign up?	
21	A Yes.	
22	Q On the next page, I will just confirm that the	
23	first entry dated July 17th is your Amex	
24	Disability Plan charge of 12.95 per month?	

March 15, 2007

Deposition of Altagracia J. Peguero

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1	because I already paid.	1 A Yes, I opened it and I read in the front.
2 Q	On the first page you're talking now?	2 Q By the way, turning to the second page, do you
3 A	Yes, this credit was for that, this one here.	3 recognize the second page as the envelope that
4 Q	The \$49 credit?	4 this document came in?
5 A	\$49, yes.	5 A Yes.
6 Q	Yes, my question just now was on the \$14.95 just	6 Q Do you remember seeing that envelope or an
7	below that for MWI Essentials.	7 envelope with those words and the picture on it?
8 A	Oh yes.	8 A Yes, and the 1.5 million disability plan.
9 Q	My question was whether you know why the amount	9 Q Did you recognize that actor whose picture was
10	increased from 9.95 to 14.95 from the prior	10 there?
11	bills?	11 A Yes.
12 A	I know the amount from credit protection is	12 Q You knew who that was?
13	going up when I was paying more money. If I had	13 A Sure, Superman.
14	paid more money, the credit protection plan is	14 Q Did you know his man, the actor's name?
15	going up and another plan, too.	15 A Sure, Christopher Reeve.
16 Q	On this MWI Essentials, do you know why that one	16 Q And you knew that at the time when you got this
17	went up as of this bill?	17 in the mail?
18 A	I don't know.	18 A Yes.
19 Q	Do you remember when -- I think I may have	19 Q Did you read this entire document when you
20	already asked you this. Do you remember when	20 opened it, that is the front and back?
21	you canceled the MWI Essentials?	21 A No, just in the front.
22 A	No, I don't remember.	22 Q I take it you read the large headline at the top
23	MR. PINTO: I propose we take a short	23 right side?
24	break of 7 to 10 minutes.	24 A Sure, I see the highlight advertisement, yes.
	Page 58	Page 60
1	(Recessed at 11:30 a.m.,	1 Q I take it, when you read that, you read the
2	resumed at 11:46 a.m.)	2 words "up to" that are next to 1.5 million?
3	(The document was marked as Exhibit	3 A Sure.
4	No. 5.)	4 Q You know what that means in English?
5 Q	If you could look at what's marked as Exhibit 5,	5 A Yes.
6	and let me know when you're done looking it	6 Q Up to?
7	over.	7 A Yes.
8 A	(Witness reviews document.) I'm ready.	8 Q Did you understand that that meant that
9 Q	Understanding that this letter is addressed to	9 \$1.5 million was the maximum that you could
10	Sample A. Sample, putting that aside, do you	10 recover under this product?
11	recognize this document?	11 A Yes.
12 A	Sure.	12 Q And that there would be circumstances where you
13 Q	Do you recognize having received this document	13 might be entitled to less than the maximum
14	or a very similar document in the mail?	14 amount?
15 A	Yes, similar document.	15 A Yes.
16 Q	This is something that arrived in your mail?	16 Q In other words, the words "up to" you understood
17 A	Yes.	17 that expression?
18 Q	Do you remember when it was that you received	18 A Yes.
19	this?	19 Q Do you remember reading the text of the letter
20 A	Not exactly. I know it was 2002, but I don't	20 between Dear Sample A. Sample, and the signature
21	remember exactly.	21 at the bottom?
22 Q	You don't remember what month?	22 A Sure.
23 A	No, I don't remember the month.	23 Q So at the time you opened it, you read it?
24 Q	Did you read the document when you opened it?	24 A Yes.

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1	Q Looking at the third paragraph of the text of 2 the letter, the third sentence begins, "Within 3 ten days, you will receive a Plan Summary and a 4 complete Benefit Plan Description." Do you 5 remember reading that at the time?	1 Q So you didn't read "Important Disclosure" in the 2 middle of the page?
6	A Yes.	3 A No.
7	Q The next sentence says, "Review the Plan 8 materials at your leisure. If you are not 9 satisfied for any reason, you may cancel within 10 the first 90 days and receive a full refund of 11 Plan fees." You read that part, as well?	4 Q And you didn't read any of the words after 5 important disclosure?
12	A Sure.	6 A No.
13	Q A few lines below the signature, it says, "For 14 more plan details and additional benefits, 15 please see reverse side." Do you remember 16 reading that?	7 Q How long after you opened and read the front 8 page and the first line of the second page did 9 you sign the form and return it? In other 10 words, was it the same day or --
17	A Yes:	11 A Yes, same day, immediately.
18	Q Did you ever see the reverse side and turn the 19 paper over?	12 Q Do you remember how long it was from the time 13 you sent in the form to the time you first saw 14 that you were being charged on your American 15 Express bill?
20	A No, I don't remember that.	16 A No, I don't remember.
21	Q Did you read --	17 Q What did you do -- I assume you cut off or tore 18 off the bottom portion?
22	A Yes.	19 A Yes.
23	MR. DONIUS: Wait for the question, 24 please.	20 Q Did you save the top portion in a file in your house?
		22 A I don't remember exactly. I remember I signed it and I sent it back.
		24 Q But you have no memory of whether you kept the
	Page 62	Page 64
1	Q My question is, did you read the text of the 2 bottom portion of this front page to the right 3 of the picture?	1 top part and put it in with your important 2 papers?
4	A Yes.	3 A I don't remember.
5	Q At some point you signed the bottom of the sheet 6 that you received and returned it to American 7 Express?	4 Q Did you ever see the letter again until we were 5 sitting here today?
8	A Yes.	6 A Before? Yes, because you sent to me another 7 one, one day, but it was a different plan, you 8 know...
9	Q If you could turn the paper over, please. Is it 10 your testimony that at the time you received 11 this and read it, and as of the time you signed 12 and returned the form at the bottom, you had not 13 turned the page over and read any of the words 14 on the back page?	9 Q A letter that looks very much like this?
15	A I just read the first line, "These additional 16 valuable benefits are included with your plan." 17 Then I stopped reading.	10 A Very similar of this one.
18	Q After that first line, you didn't go on to read 19 the words right under that heading --	11 Q But my question is, after you tore off the 12 bottom, signed it and sent it to American 13 Express, you don't remember whether you put the 14 rest of the letter away somewhere or not?
20	A No.	15 A Right now, I don't remember.
21	Q -- to see what the additional benefits were?	16 Q Do you remember whether you ever found it in 17 your house anytime after you signed the bottom 18 and sent it back to American Express?
22	A No.	19 A I have everything in my files.
23	Q Did you read the words "Important Disclosure"?	20 Q Did you look back in your files and look for 21 this, this particular letter?
24	A I just read the letters at the top and no more.	22 A I don't remember, because I was just going 23 through my files and looking for something important. When I found, I just take.

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1 Q	After signing and returning the bottom, you're	1 Q So I take it you didn't call American Express
2 not sure whether you ever saw this, the one that	2 when you didn't see any more information coming	3 to ask where it was or to ask them to send it?
3 you received again?	4 A No, I'm sure no call.	5 Q So you did read the words that said they were
4 A I don't remember exactly.	6 going to send something more within ten days	7 when you opened it?
5 Q After your accident, did you look for paperwork	8 A Yes, I read all the front. I just be interested	9 in the 1.5 million if an accident leaves you
6 having to do with this accidental disability	10 permanently disabled. And I just think about	11 that, and I read the first part too, the last
7 plan in your files?	12 one too, and then sign here, and I read here.	13 Q You understood that this was an insurance
8 A Not exactly, maybe -- no, I looking for that,	14 policy?	15 A Yes. I see what Christopher Reeve say here, and
9 yeah, but was after, not immediately. Because I	16 I think about, that was my decision.	17 Q Did you understand at the time that the
10 didn't remember I have this. When I remembered	18 insurance coverage would be described in a	19 policy? In other words, something other than
11 oh, I have insurance from American Express, and	20 this letter?	21 A Yes, you know what, I buy this insurance because
12 I need to let them know I have an accident and	22 I believe in American Express. I saw American	23 Express sign, and I believe in that, and I know
13 I'm disabled.	24 this guy. You think about being disabled one	25 day, and I think about my son because I read
14 Q Sometime after your accident but not right away,	26 this part. "Most people don't think about	27 disability coverage until it's too late. Please
15 you remembered that you had the American Express	28 don't put this off."	29 Q My question was whether you understood after you
16 insurance?	30 read this letter that there would be an	31 insurance policy that would have more details
17 A Yes.	32 about what was covered?	33 A No, I just think about American Express is a
18 Q Did you then look in your important papers?	34 good corporation, and I believe in this guy. I	35 think about this. And I was feeling sure about
19 A Yes.	36 what American Express offers to me, you know.	37 Q Did you think that this letter was the entire
20 Q Did you find the top part of this document	38 insurance policy?	39 A I know that this isn't not entire. I know.
21 that's marked as Exhibit 5?	40 Q You knew it was not?	41 Q You knew it was not?
22 A I don't remember this part, because after my	42 A Yes.	43 Q When you didn't receive the entire insurance
23 accident, I was, you know, really confused. My	44 policy, you didn't remember to look for that?	45 A No, I didn't take care about this thing because
24 life changed, and I can't remember exactly.	46 I have too much thing about thinking in my	47 house, about my son, my job, my house,
	48 everything.	49 Q So at no point you called American Express --
	Page 66	Page 68
1 Q	So when you say you can't remember exactly, that	1 day, and I think about my son because I read
2 means you don't remember if you found this	2 this part. "Most people don't think about	3 disability coverage until it's too late. Please
3 letter or not?	4 don't put this off."	5 Q My question was whether you understood after you
4 A Yes, I don't remember exactly.	6 read this letter that there would be an	7 insurance policy that would have more details
5 Q Do you have it today? In other words, not a	8 about what was covered?	9 A No, I just think about American Express is a
6 photocopy but the one that you received, do you	10 good corporation, and I believe in this guy. I	11 think about this. And I was feeling sure about
7 still have that?	12 what American Express offers to me, you know.	13 Q Did you think that this letter was the entire
8 A I don't know. I don't know.	14 insurance policy?	15 A I know that this isn't not entire. I know.
9 Q Did you receive anything from American Express	15 Q You knew it was not?	16 Q You knew it was not?
10 within ten days, as they say, on this letter?	16 A Yes.	17 Q When you didn't receive the entire insurance
11 A I don't remember receiving that.	17 policy, you didn't remember to look for that?	18 A No, I didn't take care about this thing because
12 Q A plan summary, you don't remember?	18 I have too much thing about thinking in my	19 house, about my son, my job, my house,
13 A I don't remember receiving that.	19 everything.	20 Q So at no point you called American Express --
14 Q Or a benefit plan description?	20	21
15 A Yes.	21	22
16 Q This letter asks you to review those materials	22	23
17 and decide if you want to cancel the insurance.	23	24
18 Do you remember looking for those in the mail?	24	
19 In other words, expecting them to come?		
20 A No, I don't remember receiving them.		
21 Q My question now is do you remember looking for		
22 them, waiting for them to come, expecting them?		
23 A I don't remember that because I have too many		
24 things to think about.		

	Page 69	Page 71
1	A No.	1 A Excuse me?
2	Q At no point prior to your accident you contacted	2 Q Why did you not continue reading after you read
3	American Express about this plan to ask them any	3 the top line?
4	questions or ask for the rest of the information	4 A What I was trying to explain to you. I see
5	or the policy?	5 American Express -- what is this?
6	A No, you see I have already --	6 Q Logo.
7	MR. DONIUS: You answered. He just	7 A Logo, okay. I saw American Express logo. I
8	asked you whether you did it or not, and you	8 believe in American Express. And I think about
9	said no.	9 what Christopher Reeve say. I say I'm pretty
10	A No. Okay. No.	10 sure with this American Express Company, you
11	Q Did you ever call American Express for any	11 know, and I believe in that. And I see if you
12	reason, customer service, any reason having to	12 are going to be permanent disability, you are
13	do with this insurance, this plan before your	13 going to get 1.5 million.
14	accident?	14 Q But you understood that there was a policy that
15	A No.	15 would have more details about when you would get
16	Q Just before we leave this. To be clear, on the	16 the 1.5 million and when you might not? Did you
17	backside of the page, the only thing that you	17 understand that?
18	read was the first line at the very top of the	18 A Yes, I understand.
19	page that says, "These additional valuable	19 Q But you never got the policy?
20	benefits are included with your plan."	20 (Question translated by the
21	A Yes.	21 interpreter.)
22	Q You didn't read the words immediately under that	22 A (By the Interpreter) But I want to know, when
23	or any of the other words on the page?	23 does he want me to read it, before or after?
24	A No.	24 Q My question was whether she understood at the
	Page 70	Page 72
1	Q Besides the \$1.5 million disability coverage,	1 time -- whether you understood at the time you
2	did you understand what other benefits were part	2 signed up that there was more paperwork with
3	of this plan when you signed up?	3 details about when you would be entitled to
4	A Yes, because I see I have more value benefits,	4 1.5 million and when you might be entitled to
5	you know, emergency accident. I just read the	5 less or when you might be entitled to nothing
6	highlight things in here. I say, oh, it's a	6 depending on the type of accident?
7	good opportunity for me.	7 MR. PINTO: So the question is
8	Q Did you read the bold print below the top line?	8 directed to the time she enrolled and signed the
9	A No.	9 form.
10	Q You read the top line?	10 (Question translated by the
11	A Yes.	11 interpreter.)
12	Q You didn't read the next bolded line right below	12 A Yes, I know that the policy about that. But I
13	it that says, "\$2,500 Emergency Accident and	13 know what mean permanent disability, you know.
14	Sickness Medical Expense Benefit"?	14 That's what I think. I understand here
15	A I just look at this line, not completely, no.	15 permanent disability. And then I don't know if
16	No, I didn't read that one.	16 they have another meaning about disabled person.
17	Q Right now I'm talking about the back page, and	17 THE INTERPRETER: Another definition.
18	my question was about that particular line right	18 A The definition, I don't know the definition for
19	below the top line? And your testimony is you	19 this policy about permanent disability because I
20	did not --	20 could be permanent disability. That's what I
21	A I just read the top line. I just read the top	21 read here very highlight.
22	line.	22 Q Were you interested to know the definition or
23	Q Why didn't you read on, the rest of what was on	23 did you not care what the definition was?
24	the back page?	24 A I don't want to know what was your policy

	Page 73	Page 75
1	because I just see what you are selling to me.	1 Express company that influenced your decision to
2	You sell to me the policy for 1.5 million if an	2 buy the insurance?
3	accident leaves me permanently disability.	3 A Yes.
4	That's what I understand about that.	4 (Question translated by the
5 Q	What did you understand permanent disability to	5 interpreter.)
6 mean? What did that mean to you when you read	6 A Because I have a family here who was customer	
7 those words?	7 from American Express from a long time ago, and	
8 A	8 my aunt told me about this company. She	
9 after the accident. You know, this is for	9 believed in that. I start to apply for this	
10 accident, you know, and then I can't come back	10 card, and I believe in this company, you know.	
11 to my job again.	11 Q Because of family members' --	
12 Q	12 A Yes.	
13 So permanent disability meant to you that you	13 Q -- experience?	
14 couldn't go back to your job that you had	14 A Yes, because of family members' experience.	
15 before?	15 While I use it, I know it is a good company,	
16 A	16 because you see I buy many things from there. I	
17 Did you understand permanently disabled to mean	17 didn't buy anything from another company.	
18 if you were able to go to a different job, you	18 (The document was marked as Exhibit	
19 would be permanently disabled, even though you	19 No. 6.)	
20 could do a different job?	20 Q Would you look at this next exhibit, please?	
21 A	21 A (Witness views document.)	
22 Q	22 Q Does that appear to be a copy of the actual	
23 this piece of paper.	23 bottom of the form that you received and signed?	
24 A	24 A Yes.	
	Page 74	Page 76
1 Q	I had asked you what permanently disabled meant	1 Q That is your signature or a copy of your
2 to you, and you said, "If I couldn't go back to	2 signature?	
3 my job." The question I'm trying to ask is	3 A Yes.	
4 whether your understanding of permanently	4 (The document was marked as Exhibit	
5 disabled included a disability where you	5 No. 7.)	
6 couldn't go back to any job other than your own	6 A (Witness reviews document.)	
7 job? In other words, if you had an accident,	7 Q Have you finished?	
8 you became disabled, but you could do a	8 A Yes.	
9 different job, did you understand that to be	9 Q Did you ever receive this document in the mail	
10 permanent disability?	10 from American Express?	
11 A	11 A Yes.	
12 Q	12 Q Do you remember when in relation to the first	
13 You did understand that there was a policy that	13 document you received this?	
14 would have a definition of what the company	14 A No.	
15 thought or what the company defined as	15 Q You don't know if it was weeks or months later?	
16 permanently disabled?	16 A No, I don't remember.	
17 THE WITNESS: What is he saying to me?	17 Q Did you read this document when it arrived?	
18 (Question translated by the	18 A Yes.	
19 interpreter.)	19 Q Did you sign and tear off the bottom of this	
20 A No.	20 form and return it to American Express?	
21 THE INTERPRETER: I told her, "Were	21 A I don't remember that.	
22 you not interested to know what the company	22 Q Did you turn this document over and read --	
23 defined permanently disabled?"	23 A No.	
24 MR. PINTO: And the answer was no.	24 Q You didn't read anything on the back?	
Q Tell me again what it is about the American		

	Page 117	Page 119
1	A No, I don't remember exactly why.	1 questions.
2	Q You never found out why?	2 CROSS EXAMINATION
3	A No, because he have the picture back, and I say,	3 BY MR. DONIUS:
4	"Just hold it until I can go to Florida."	4 Q Altagracia, if you could pull out Exhibit 5 and
5	Q Where is your mailbox for the house? Is it on	5 Exhibit 7. On both Exhibit 5 and Exhibit 7, at
6	the house?	6 the bottom there's an enrollment form with
7	A It's the office of the Boston Public Housing,	7 Christopher Reeve on it. Do you see that?
8	they have it.	8 A Yes.
9	Q So you go to the office?	9 Q Do you recall receiving two documents or just
10	A The room.	10 one document that had Christopher Reeve's photo
11	Q Is it a little box that you have a key for?	11 on it?
12	A Yes.	12 A Just one. Just this.
13	MR. PINTO: I don't think I have any	13 Q The Exhibit 5 is the one that you received?
14	other questions, but just give me about a	14 A Yes.
15	minute.	15 Q You were asked some questions about Exhibit 7,
16	MR. DONIUS: While you do that, I'm	16 do you have any memory of receiving Exhibit 7 in
17	just going to talk to Altagracia because I may	17 the mail?
18	or may not have a question or two.	18 A Not that one because I didn't sign it. If I
19	(Recessed at 1:12 p.m.,	19 received it, I already signed it. I don't
20	resumed at 1:17 p.m.)	20 remember. Yes, I was confused, because this is
21	BY MR. PINTO:	21 looking almost similar, you know, from the
22	Q Do you remember seeing a doctor named Frances	22 picture.
23	Defrin, Dr. Defrin?	23 Q So you say you were confused when you were
24	A She is a counselor, yes.	24 answering the questions regarding Exhibit 7?
	Page 118	Page 120
1	Q Where was she a counselor at?	1 A Yes.
2	A She was working at Cambridge, I think so, yes.	2 Q You were confused about having thought that you
3	Q Why did you go to see her?	3 had received it; is that right?
4	A She was my counselor first time, but she had a	4 A Yes.
5	stroke and she was unable to treat me.	5 Q Is it your best memory now that you received
6	Q How did you first meet up with her? Was she	6 Exhibit 5, but not Exhibit 7?
7	recommended by a doctor?	7 A Yes, because now I understand the difference. I
8	A Yes, by somebody from Mass. General, I think it	8 was thinking I was reading that one.
9	was Guy, Leslie Guy or Guy Leslie, somebody like	9 Q You thought you were reading about Exhibit 5?
10	this. She saw me one time at the Mass. General,	10 A Yes. I was confused.
11	because I was really bad, and she talked with	11 MR. DONIUS: That's it. I have no
12	me. I don't remember if I have been at the	12 further questions.
13	psychiatric department or outside, because I	13 MR. PINTO: Can I see the two exhibits
14	think like one or two times I was at the	14 as marked.
15	psychiatric department, but just the emergency,	15 (Document tendered.)
16	nobody send me to another psychiatric.	16 REDIRECT EXAMINATION
17	Q Dr. Defrin, how many times did you see her?	17 BY MR. PINTO:
18	A I see her many times.	18 Q Ms. Peguero, when I was asking you about
19	Q Until she had a stroke, and then she couldn't	19 Exhibit 7, you recall that we had recently
20	carry on?	20 looked at Exhibit 5, and I had asked you some
21	A Yes.	21 questions about Exhibit 5.
22	MR. PINTO: I don't have anything	22 THE WITNESS: What is the question?
23	else.	23 (Question translated by the
24	MR. DONIUS: I just have a couple of	24 interpreter.)

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- 1 A Yes, but I have been confused. I was thinking I
2 was talking about that one. My memory is not
3 good, you know. I have been confused.
4 Q So even though we had just looked at the two of
5 them next to each other in close time, you were
6 confused?

7 (Question translated by the
8 interpreter.)

- 9 A Yes. When I was answering the question, I was
10 thinking I was reading that one.

- 11 Q It was after we took a break and you consulted
12 with your counsel that your confusion was
13 cleared up?

- 14 A Yes. I just received that one.

- 15 Q Pointing to Number 5?

- 16 A Number 5, yes. I told you, I just see the
17 1.5 million for payment and disability. I just
18 followed the financial security.

- 19 Q Although Number 7 doesn't have that on the top
20 at the time I asked you about it, you believed
21 you had received it?

- 22 A If I received that one, I signed it, but I
23 didn't sign it. I don't receive that one or I
24 don't remember. That's why I was confused,

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1 because with the same envelope, you say to me,
2 and then I was thinking about the envelope was
3 that one, not this.

- 4 MR. PINTO: Just have the record
5 reflect when she was talking about this in her
6 last part of her answer, she was pointing to
7 Number 7. So when we are reading the transcript
8 later, we know what this is and what that is.

- 9 A Because it is not the same one. You marking
10 that one the first time.

- 11 MR. PINTO: I don't think I have
12 anything else.

- 13 MR. DONIUS: Okay, that's it.
14 (Off the record.)

- 15 MR. PINTO: I want to put on the
16 record that because of the issues concerning the
17 confidentiality of the two settlements I asked
18 for, I'm going to suspend rather than terminate
19 the deposition while I further consider whether
20 those confidentiality issues are something that
21 I'm going to pursue. And if I decide to pursue
22 it, then either by agreement of counsel or by
23 order of the Court, I may need to resume the
24 deposition on those subjects.

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1 MR. DONIUS: Just a brief response.
2 We consider the deposition concluded, but we
3 will listen to any further requests that counsel
4 may have.

5 COURT REPORTER: Mr. Donius, are you
6 ordering a transcript?

7 MR. DONIUS: Yes.

8
9 (Whereupon at 1:25 p.m., the
10 deposition was adjourned.)
11
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1 SIGNATURE PAGE/ERRATA SHEET

2 Re: Altadecia J. Peguero vs. American Express Company
and Healthextras, Inc.

3 March 15, 2007
4 Deposition of Altadecia J. Peguero

5 I, ALTADECIA J. PEGUERO, do hereby
6 certify that I have read the foregoing transcript of
7 my testimony and further certify that it is a true
8 and accurate record of my testimony (with the
exception of the following changes listed below).
Page Line Correction

9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____

21 Signed under the pains and penalties
of perjury this ____ day of ____ 200 ____.

22
23
24 ALTADECIA J. PEGUERO

Page 1

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

ALTAGRACIA J. PEGUERO.

4

Plaintiff : Case No:

5 05-10995-RCL

- V S -

... Pages 1

AMERICAN EXPRESS COMPANY and :
THE TRAVELERS INSURANCE COMPANY and :

8 Defendants. :

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1 Deposition of Joanna Ficklin

Rockville, Maryland

3 Friday, February 2, 2007

Reported by: Kathleen M. Vaglica, RMR

JOB NO: 179006

DC 1-800-441-3376

ESQUIRE DEPOSITION SERVICES

VA 1-800-752-8979

EXHIBIT C

Joanna Ficklin

<p>1 PROCEEDINGS 2 Thereupon, 3 Joanna Ficklin, 4 a witness, called for examination by counsel for the 5 Plaintiff and, after having been sworn by the 6 notary, was examined and testified as follows: 7 MR. DONIUS: The parties have agreed to 8 the usual stipulations by which is meant all 9 objections except to the form of the question are 10 reserved until the time of trial. Motions to strike 11 are likewise reserved until the time of trial. I 12 assume, of course, Don, you're going to have the 13 witness read and sign and under the pains of penalty 14 of perjury within 30 days? 15 MR. PINTO: I will. 16 MR. DONIUS: Okay. Would you swear the 17 witness, please. 18 Thereupon, 19 JOANNA FICKLIN, 20 a witness, called for examination by counsel for the 21 Plaintiff and, after having been sworn by the 22 notary, was examined and testified as follows:</p>	<p style="text-align: right;">Page 6</p> <p>1 Q. And what sort of product were you working 2 with? 3 A. A catastrophic permanent total disability 4 benefit program. 5 Q. And can you briefly summarize your job 6 duties back in July of 1999 when you first became an 7 account manager? 8 A. I was the account manager for American 9 Express in particular, and we worked together to 10 coordinate making this program available to their 11 card members. 12 Q. During that time frame when you first 13 started, July 1, 1999, were you working exclusively 14 on the American Express account? 15 A. No. 16 Q. What other accounts were you working on? 17 A. I don't remember all the names, but there 18 were other financial institutions, and I just helped 19 out wherever it was needed. 20 Q. Were those other accounts also involved 21 with disability policies? 22 A. What do you mean by involved with</p>
<p>1 EXAMINATION BY COUNSEL FOR THE PLAINTIFF 2 BY MR. DONIUS: 3 Q. Would you state your name, please? 4 A. Joanna Ficklin. 5 Q. And what's your date of birth? 6 A. January 17, 1972. 7 Q. And what's your work address? 8 A. 800 King Farm Boulevard, Rockville, 9 Maryland, 20850. 10 Q. And your employer is who? 11 A. HealthExtras, Inc. 12 Q. How long have you worked as HealthExtras, 13 Inc.? 14 A. Since July 1, 1999. 15 Q. When you were first hired by HealthExtras, 16 what was your job title? 17 A. I was an account manager. 18 Q. What type of accounts? 19 A. What do you mean? 20 Q. Well, you were an account manager. What 21 type of accounts were you managing? 22 A. Financial institutions primarily.</p>	<p style="text-align: right;">Page 7</p> <p>1 disability policies? 2 Q. Well, were they -- did they have a 3 disability policy that you were working on? 4 A. They offered programs that may have 5 included a disability policy. 6 Q. Prior to you starting up at HealthExtras, 7 do you know if HealthExtras was already in the 8 business of promoting disability programs at that 9 point before you got here? 10 A. I believe to, I believe on a limited 11 basis. 12 Q. Is it your understanding that around this 13 time, July 1 of 1999, when you came aboard they were 14 starting to get, HealthExtras was starting to get 15 more involved in the supplemental benefit programs? 16 A. They were involved in supplemental benefit 17 programs. 18 Q. Was the level of involvement increasing at 19 the time you got, came aboard? 20 A. I don't know because I wasn't here before 21 that time. 22 Q. At some point did your job title change</p>

3 (Pages 6 to 9)

Joanna Ficklin

<p>1 A. Not that I can recall.</p> <p>2 Q. With respect to the permanent total 3 disability policies that American Express was 4 offering, HealthExtras was involved with when you 5 became Director of Supplemental Benefits, did all of 6 those policies have substantially the same terms and 7 exclusions, as far as you know?</p> <p>8 A. Yes.</p> <p>9 Q. And of the 60 to 70 percent of the 10 programs that you were involved with that had 11 disability, a disability component of it, how many 12 of those or approximately had a permanent total 13 disability component?</p> <p>14 MR. PINTO: Object to the form.</p> <p>15 THE WITNESS: I would have to guess.</p> <p>16 BY MR. DONIUS:</p> <p>17 Q. I don't want you to guess, but, if you 18 have a memory, were there more than one program when 19 you became Director of Supplemental Benefits? Was 20 there more than one program that offered the 21 permanent total disability policy?</p> <p>22 A. Yes.</p>	<p>Page 14</p> <p>1 total disability?</p> <p>2 A. Okay. There was another program that 3 other financial institutions marketed.</p> <p>4 Q. And what financial institutions?</p> <p>5 MR. PINTO: I'm just going to make an 6 objection and an observation on the record, which is 7 that I haven't objected so far about other plans 8 because I understand this to be by way of getting 9 the witness's background and experience, but I will 10 object if we start heading down the road of any of 11 the other plans consistent with the Court's ruling 12 on the motion for protective order in which the 13 Court struck from the topics for examination the 14 references to substantially similar plans leaving 15 only the American Express disability plan as an 16 appropriate topic for today's deposition.</p> <p>17 MR. DONIUS: I'm just trying to get a 18 sense as to what your job background was and what 19 you, type of programs you'd worked on previously.</p> <p>20 BY MR. DONIUS:</p> <p>21 Q. Can you think of any program or plan that 22 was marketed by any financial institution that had</p>
<p>1 Q. And one was the American Express 2 disability plan; true?</p> <p>3 A. Yes.</p> <p>4 Q. What were the others, do you recall?</p> <p>5 A. The others that --</p> <p>6 Q. Offered permanent total disability.</p> <p>7 A. I'm having a hard time answering that 8 question because it's not clear the way that it's 9 worded to me, you know, what other programs offered 10 a permanent total disability.</p> <p>11 Q. I'm confused as to what part is confusing 12 you. What's --</p> <p>13 A. I'm not sure what you're asking me when 14 you said what other programs offer --</p> <p>15 Q. I'm just trying to use HealthExtras' 16 terminology to make life easy for everybody. When 17 you talk about the American Express accidental plan, 18 Accidental Disability Plan, do you call that a 19 program? What do you call that?</p> <p>20 A. Theirs was an American Express plan.</p> <p>21 Q. Was there a Citibank plan or an any other 22 plans that also had as a component of it a permanent</p>	<p>Page 15</p> <p>1 an accidental disability permanent total disability 2 insurance component to it?</p> <p>3 A. Yes.</p> <p>4 Q. What can you think of?</p> <p>5 A. I think I just stated that there was 6 another program that had a permanent total 7 disability policy that was offered by other 8 financial institutions.</p> <p>9 Q. What was the name of that program or 10 programs?</p> <p>11 A. I think it was called Accidental 12 Disability Program.</p> <p>13 Q. All right. And for those programs there 14 would be an underwriter; someone other than 15 HealthExtras as an underwriter?</p> <p>16 A. Correct.</p> <p>17 MR. PINTO: Objection.</p> <p>18 THE WITNESS: HealthExtras is not an 19 underwriter.</p> <p>20 BY MR. DONIUS</p> <p>21 Q. And there would be a marketing partner to 22 help market the program?</p>

5 (Pages 14 to 17)

Joanna Ficklin

<p>1 A. Correct.</p> <p>2 Q. And the marketing partner would be 3 typically some financial institution?</p> <p>4 A. Correct.</p> <p>5 Q. Did your job title change from Director of 6 Supplemental Benefits at any point?</p> <p>7 A. Yes.</p> <p>8 Q. What was the next title that you held?</p> <p>9 A. Vice President, Sales Administration.</p> <p>10 Q. And when did you get that title?</p> <p>11 A. I believe September 2005.</p> <p>12 Q. Is that your current title?</p> <p>13 A. Yes.</p> <p>14 Q. Did your job duties change when you took 15 that position?</p> <p>16 A. Yes.</p> <p>17 Q. How so?</p> <p>18 A. I now work for a Pharmacy Benefits 19 Management Division of the company.</p> <p>20 Q. Can you tell me just briefly about your 21 work history before you came to HealthExtras?</p> <p>22 A. I worked in pharmacy -- I mean, sorry. I</p>	<p>Page 18</p> <p>1 Q. And then what was your next job?</p> <p>2 A. Contracting with health care providers.</p> <p>3 Q. And then after working, contracting with 4 health care providers, is that when you came to 5 HealthExtras?</p> <p>6 A. Correct.</p> <p>7 Q. I guess I'll just -- I forgot to mark this 8 at the beginning of the deposition, but this is the 9 deposition notice, if we can mark it as the first 10 exhibit, please. Exhibit 1.</p> <p>11 (Ficklin Exhibit No. 1, Deposition Notice, 12 was marked for identification and retained by 13 counsel.)</p> <p>14 BY MR. DONIUS:</p> <p>15 Q. I'm going to show you a document and ask 16 you to take a moment to look at that and answer if 17 you've seen that before.</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 MR. DONIUS: And I guess this is really 21 just for you, Don, on the record that the only 22 documents produced in connection with this</p>
<p>1 worked in provider contracting with physicians and 2 hospitals.</p> <p>3 Q. What is provider contracting?</p> <p>4 A. We were developing a network of physician 5 hospital organizations, so health care providers.</p> <p>6 Q. And what other experience, if any, had you 7 had in working prior to coming to HealthExtras?</p> <p>8 A. Can you be more specific than experiences? 9 It's rather broad.</p> <p>10 Q. When did you get out of college?</p> <p>11 A. In 1994.</p> <p>12 Q. Where did you go to college?</p> <p>13 A. Towson State University.</p> <p>14 Q. What did you get your degree in?</p> <p>15 A. Business administration.</p> <p>16 Q. What was the first job you had after 17 graduating?</p> <p>18 A. A receptionist.</p> <p>19 Q. Where did you work? It's all right. I'll 20 move on to the next question. How long 21 approximately did you work as a receptionist?</p> <p>22 A. For a year.</p>	<p>Page 19</p> <p>1 deposition notice were the ones that you produced 2 with the Bates stamps on them plus what you gave me 3 this morning.</p> <p>4 MR. PINTO: Plus the several this morning, 5 right.</p> <p>6 MR. DONIUS: And that's all that you have 7 that you are producing in connection with this 8 deposition?</p> <p>9 MR. PINTO: Yes, although I have to say, I 10 had -- I guess this can be on the record. I had 11 reference when we produced documents not to what's 12 attached to the deposition notice, but to your, what 13 I believe was a separate Rule 34 request. I never 14 went to compare the two to see if the one that's 15 attached here is identical to the other, but we 16 responded to the separate Rule 34 request.</p> <p>17 MR. DONIUS: Okay.</p> <p>18 MR. PINTO: And produced documents 19 consistent with our response, our written response 20 to that Rule 34 request.</p> <p>21 MR. DONIUS: Okay.</p> <p>22 BY MR. DONIUS:</p>

6 (Pages 18 to 21)

Joanna Ficklin

<p>1 Q. I'm going to show you a document that's 2 entitled "Initial Disclosures of Third-Party 3 Defendant, HealthExtras, Inc." and ask you to take a 4 moment to see if you've seen that before. 5 MR. PINTO: Is that going to be Exhibit 2? 6 MR. DONIUS: Yes. 7 (Ficklin Exhibit No. 2, Initial 8 Disclosures of Third-Party Defendant, HealthExtras, 9 Inc., was marked for identification and retained by 10 counsel.) 11 THE WITNESS: I don't recall seeing this. 12 MR. DONIUS: Can we have this marked 13 Exhibit 2, the Initial Disclosures of Third Party 14 Defendant, HealthExtras, Inc. 15 BY MR. DONIUS: 16 Q. I'm going to refer you to Exhibit 2 and, 17 excuse me, on the bottom of the first page it 18 indicates that you, as Vice President of Sales 19 Administration, has information concerning 20 HealthExtras' contractual relationships with 21 American Express, Federal Insurance Company and the 22 Sklover Group and HealthExtras' role in providing</p>	<p>Page 22</p> <p>1 Accidental Disability Plan to the public as a 2 product? 3 A. His role or the broker of record in 4 general? 5 Q. Well, first the broker of record in 6 general and then Mr. Sklover specifically. 7 A. The broker of record satisfied the 8 insurance agency and licensure requirements for any 9 insured benefits. 10 Q. And what about Mr. Sklover's involvement 11 in the American Express Accidental Disability Plan? 12 What else did he do, if anything? 13 A. It's a broad question. Can you just be 14 more specific? 15 Q. Was he involved in claims administration 16 in any way? 17 A. I don't know. 18 Q. Did he draft any of the promotional 19 materials? 20 A. I don't know with certainty. 21 Q. Is there anything that you do recall about 22 him doing in connection with the, this plan other</p>
<p>Page 23</p> <p>1 customer service, administration and fulfillment 2 services with respect to the accidental disability 3 plan brokered by Sklover, underwritten by Federal, 4 marketed by American Express and purchased by 5 Altagracia Peguero." Do you see that? 6 A. Yes. 7 Q. Is that a true statement? 8 A. Yes. 9 Q. Now, it also lists several people here, I 10 guess 13 different individuals, and I'm just going 11 to ask you some questions about their role in the 12 American Express's Accidental Disability Plan, as 13 far as you know it. 14 A. Okay. 15 Q. Okay. And with respect to Andrew Sklover, 16 based on your own knowledge, what was his role in 17 the American Express disability plan? 18 A. He was the President of the Sklover Group 19 who was the broker of record for Federal Insurance 20 Company. 21 Q. And his, what -- as the broker of record, 22 what do you know of his role in bringing this</p>	<p>Page 25</p> <p>1 than serving as broker of record? 2 A. Yes. I'm going to speak generally because 3 I, Andrew does not work for me, so I can't say 4 everything that he did, but generally he was the 5 person responsible for submitting all the marketing 6 materials and fulfillment materials to Federal for 7 compliance approval. 8 Q. And -- 9 MR. PINTO: I don't think she was done. 10 MR. DONIUS: Okay. I'm sorry. 11 THE WITNESS: He, he was also responsible 12 for forwarding premiums due to the carriers and just 13 generally served as a liaison between insurance 14 carriers and HealthExtras. 15 BY MR. DONIUS: 16 Q. With respect to the submitting of 17 marketing materials and fulfillment materials to 18 Federal, was he essentially just passing them along 19 from HealthExtras to Federal Insurance, as far as 20 you know? 21 MR. PINTO: Objection to the form. Go 22 ahead.</p>

7 (Pages 22 to 25)

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<p>1 THE WITNESS: I don't know.</p> <p>2 BY MR. DONIUS:</p> <p>3 Q. Did you have any expectations in that</p> <p>4 regard?</p> <p>5 A. Yes.</p> <p>6 Q. What were your expectations?</p> <p>7 A. That he would be passing, that he would be</p> <p>8 perhaps doing, looking through the materials</p> <p>9 himself, but ultimately passing them through to the</p> <p>10 insurance carriers.</p> <p>11 Q. All right. Skipping down here to number,</p> <p>12 well, I guess just go right to Number 3, Kirk, is it</p> <p>13 Voisin?</p> <p>14 A. Mm-hmm.</p> <p>15 Q. Did you have any dealings with him</p> <p>16 yourself?</p> <p>17 A. Yes.</p> <p>18 Q. What role did Mr. Voisin play in the</p> <p>19 Accidental Disability Plan?</p> <p>20 A. I believe he was one of the individuals</p> <p>21 responsible for managing Federal's relationship with</p> <p>22 HealthExtras.</p>	<p>Page 26</p> <p>1 enrollment during the due course of business,</p> <p>2 billing reminders, member requests, you know,</p> <p>3 responses to member inquiries, things of that</p> <p>4 nature.</p> <p>5 Q. Plan summary?</p> <p>6 A. A plan summary, correct.</p> <p>7 Q. You said billing reminders. Why -- were</p> <p>8 the payments automatically deducted by American</p> <p>9 Express for the, for the plan?</p> <p>10 A. Correct.</p> <p>11 Q. What would be a billing reminder?</p> <p>12 A. If, for example, a billing, for example, a</p> <p>13 billing did not successfully bill, the member would</p> <p>14 customarily be notified that the billing was not</p> <p>15 successful.</p> <p>16 Q. What would be, what would cause an</p> <p>17 unsuccessful billing?</p> <p>18 A. Something on the member's credit card that</p> <p>19 would have caused the billing to not successfully</p> <p>20 post.</p> <p>21 Q. Going back to the list here on the</p> <p>22 disclosures, how about J. Whitney Stevens? What was</p>
<p>1 Q. And earlier you had talked about marketing</p> <p>2 materials. That's a term that you used in</p> <p>3 connection with the American Express disability</p> <p>4 plan. What did you mean by "marketing materials"?</p> <p>5 A. A direct mail piece, for example.</p> <p>6 Q. And that would be something that would be</p> <p>7 sent directly to American Express customers?</p> <p>8 A. Correct.</p> <p>9 Q. And would that typically, when you use the</p> <p>10 term "direct mail", is that a, something that would</p> <p>11 be sent separately from the American Express bill?</p> <p>12 A. Correct.</p> <p>13 Q. And, if you use the term "insert", is that</p> <p>14 referencing things that were sent with a bill that</p> <p>15 was going to go anyways?</p> <p>16 A. Correct.</p> <p>17 Q. And, when you say "fulfillment materials",</p> <p>18 what do you mean?</p> <p>19 A. Fulfillment refers to post-enrollment</p> <p>20 communications to an enrollee that would include a</p> <p>21 welcome letter, the benefit plan description and any</p> <p>22 materials that would be sent to a customer after</p>	<p>Page 27</p> <p>1 his role in all of this?</p> <p>2 A. Her role was, I believe she was the vice</p> <p>3 president responsible for direct marketing programs</p> <p>4 for American Express.</p> <p>5 Q. Do you know what she did? That was her</p> <p>6 title, but do you know what she actually did in</p> <p>7 terms of this plan?</p> <p>8 A. Not specifically. She signed an</p> <p>9 agreement, but I don't know what, what other role</p> <p>10 she had.</p> <p>11 Q. Which agreement did she sign?</p> <p>12 A. An agreement between HealthExtras and</p> <p>13 American Express.</p> <p>14 Q. The marketing agreement?</p> <p>15 A. Correct.</p> <p>16 Q. How about Abby Mink? Do you know what</p> <p>17 role she played in the plan?</p> <p>18 A. Yes. She was an account manager, I</p> <p>19 believe.</p> <p>20 Q. And as account manager what, based on what</p> <p>21 you know, would she do in connection with this plan?</p> <p>22 A. She was generally responsible for</p>

8 (Pages 26 to 29)

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<p style="text-align: right;">Page 46</p> <p>1 A. Correct.</p> <p>2 MR. DONIUS: Can we have this marked as</p> <p>3 the next exhibit, please?</p> <p>4 (Ficklin Exhibit No. 3, Benefit Plan</p> <p>5 Description, was marked for identification and</p> <p>6 retained by counsel.)</p> <p>7 MR. PINTO: Three?</p> <p>8 THE REPORTER: Three.</p> <p>9 BY MR. DONIUS:</p> <p>10 Q. Okay. With respect to this American</p> <p>11 Express Accidental Disability Plan, which we've</p> <p>12 already discussed to some extent, was this a plan</p> <p>13 that was developed by HealthExtras?</p> <p>14 A. What do you mean by developed by?</p> <p>15 Q. Well, developed by, I just took that term</p> <p>16 from some documents that HealthExtras produced</p> <p>17 describing its own role in these programs, and it</p> <p>18 describes that HealthExtras was in the business of</p> <p>19 developing supplemental benefit programs.</p> <p>20 A. Okay. HealthExtras contracted with</p> <p>21 insurance carriers, benefit providers, a broker of</p> <p>22 record, Christopher Reeve and financial institutions</p>	<p style="text-align: right;">Page 48</p> <p>1 MR. PINTO: Objection.</p> <p>2 THE WITNESS: According to the insurance</p> <p>3 carrier, that is something that should be disclosed.</p> <p>4 BY MR. DONIUS:</p> <p>5 Q. And, to your knowledge, was it always</p> <p>6 disclosed in connection with the marketing of this</p> <p>7 Accidental Disability Plan whenever Mr. Reeve</p> <p>8 provided an endorsement?</p> <p>9 A. Yes.</p> <p>10 Q. And was it important to you that the fact</p> <p>11 that he was being paid for his endorsements be</p> <p>12 disclosed in a manner that would effectively</p> <p>13 communicate the disclosure to the end user?</p> <p>14 MR. PINTO: Object to the form.</p> <p>15 THE WITNESS: Federal Insurance Company</p> <p>16 controlled all the disclosures. I didn't personally</p> <p>17 get involved.</p> <p>18 BY MR. DONIUS</p> <p>19 Q. Well, you say you didn't get personally</p> <p>20 involved in the disclosure. Were you involved in,</p> <p>21 for instance, this document, the financial, headed</p> <p>22 up "Financial Security"? There's a disclosure on</p>
<p style="text-align: right;">Page 47</p> <p>1 to make the product available.</p> <p>2 Q. And with respect to Christopher Reeve,</p> <p>3 does he get paid or did he get paid for his</p> <p>4 endorsement of this product?</p> <p>5 A. Yes.</p> <p>6 Q. How did he get paid?</p> <p>7 MR. PINTO: I'm going to object. I think</p> <p>8 that's outside the scope. I'll let her answer that</p> <p>9 question, but Reeve doesn't, to my memory, show up</p> <p>10 in any topic of discussion for today. But you can</p> <p>11 answer how he got paid, if you know.</p> <p>12 THE WITNESS: I don't recall exactly.</p> <p>13 BY MR. DONIUS:</p> <p>14 Q. Do you know if the amount he got paid was</p> <p>15 based upon the number of enrollees?</p> <p>16 MR. PINTO: Objection.</p> <p>17 THE WITNESS: I don't recall.</p> <p>18 BY MR. DONIUS:</p> <p>19 Q. Do you have an understanding of whether or</p> <p>20 not it is necessary to disclose the ultimate</p> <p>21 consumer that Mr. Reeve was being paid for his</p> <p>22 endorsement?</p>	<p style="text-align: right;">Page 49</p> <p>1 the back of that; is that right?</p> <p>2 A. Right.</p> <p>3 MR. PINTO: The question is is that right?</p> <p>4 MR. DONIUS: Right, there's a disclosure</p> <p>5 on the back.</p> <p>6 THE WITNESS: There is a disclosure on the</p> <p>7 back.</p> <p>8 BY MR. DONIUS</p> <p>9 Q. Were you involved in the creation of this</p> <p>10 document?</p> <p>11 MR. PINTO: Object to the form.</p> <p>12 THE WITNESS: I had some involvement.</p> <p>13 BY MR. DONIUS:</p> <p>14 Q. And what was your involvement?</p> <p>15 A. I collaborated with all the different</p> <p>16 parties involved to make available this particular</p> <p>17 direct mail piece that you are showing me. That</p> <p>18 included a variety of things, working with a</p> <p>19 marketing agency that was developing the piece in</p> <p>20 part, working with American Express, the Sklover</p> <p>21 Group, Federal Insurance Company, obtaining</p> <p>22 approvals from both of the parties, American Express</p>

13 (Pages 46 to 49)

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<p style="text-align: right;">Page 50</p> <p>1 and then Federal Insurance Company, and the Sklover 2 Group in making this piece available to the 3 consumers.</p> <p>4 Q. Did you consider a part of your duties to 5 make sure that this document was in compliance with 6 any regulatory or legal regulations?</p> <p>7 A. Absolutely. We were required to submit 8 everything to Federal Insurance Company for their 9 approval for anything pertaining to laws, 10 regulations, compliance matters, and I always sent 11 all marketing pieces to Federal Insurance Company to 12 obtain their approval, and, if they ever requested 13 changes, it was our duty to make sure that we 14 incorporated their changes into the piece.</p> <p>15 Q. I'm getting a little bit out of order, but 16 we can have this marked as the next exhibit, please, 17 the document saying "Financial Security" at the top, 18 right.</p> <p>19 (Ficklin Exhibit No. 4, Financial Security 20 document, was marked for identification and retained 21 by counsel.)</p> <p>22 BY MR. DONIUS:</p>	<p style="text-align: right;">Page 52</p> <p>1 marketing agreement. If you could take a look at 2 that, please.</p> <p>3 MR. PINTO: If you're going to have a 4 series of questions about this, I might propose a 5 short break for a couple minutes; is that all right?</p> <p>6 MR. DONIUS: Sure.</p> <p>7 (Whereupon, a short recess was taken.)</p> <p>8 BY MR. DONIUS:</p> <p>9 Q. Okay. With respect to the marketing 10 agreement, I don't know if you've had a chance to 11 look at that or not.</p> <p>12 MR. PINTO: Is that marked now?</p> <p>13 MR. DONIUS: Hasn't been marked yet.</p> <p>14 THE WITNESS: Okay.</p> <p>15 BY MR. DONIUS:</p> <p>16 Q. Do you recognize that document?</p> <p>17 A. I do, except for the last page.</p> <p>18 Q. Okay. Can I just see it for one second?</p> <p>19 The whole thing, yeah. Thank you. And let's give 20 it back to you. What do you recognize that document 21 to be?</p> <p>22 A. With the exception of the last page?</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. I had, getting back to the Accidental 2 Disability Plan that we've talked about, we've, I 3 think, discussed that HealthExtras contracts with 4 insurers to underwrite the insurance components; 5 true?</p> <p>6 A. Correct.</p> <p>7 Q. And you, in this case HealthExtras 8 contracted with American Express to market and sell 9 the plan; is that fair?</p> <p>10 A. Correct.</p> <p>11 Q. And, as part of the marketing and selling 12 of this plan, HealthExtras had the rights to the 13 Christopher Reeve endorsement; true?</p> <p>14 MR. PINTO: Objection.</p> <p>15 THE WITNESS: Christopher Reeve agreed to 16 endorse the product.</p> <p>17 BY MR. DONIUS:</p> <p>18 Q. Right, but that was something that 19 HealthExtras had legal agreements regarding?</p> <p>20 A. Correct.</p> <p>21 Q. Do you consider -- well, strike that.</p> <p>22 Let's move on to the next document which is a</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. With the exception of the last page.</p> <p>2 A. It is our marketing agreement with 3 American Express.</p> <p>4 Q. And that's dated September 17 of 1999?</p> <p>5 A. Correct.</p> <p>6 Q. And, as far as you know, was this the 7 controlling document between, regarding the 8 relationship between HealthExtras and American 9 Express relating to the Accidental Disability Plan?</p> <p>10 MR. PINTO: Objection.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MR. DONIUS:</p> <p>13 Q. In the second paragraph on the first page 14 there's a whereas clause. It says, "Whereas 15 HealthExtras, together with its wholly owned 16 affiliates, subsidiaries and service contract 17 entities, are engaged in, among other things, the 18 business of promoting, selling and providing to 19 consumers programs associated with disability and 20 travel, medical care insurance and nonunderwritten 21 program benefits." Do you see that?</p> <p>22 A. I see it.</p>

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1 to have acquired an enrollee.	1 \$1.5 million Accidental Disability Plan, it had the
2 Q. And to determine that would you look at	2 loss of life and dismemberment component, and it had
3 all the costs incurred and essentially just divide	3 a \$2,500 emergency accident and sickness medical
4 it by the number of enrollees?	4 expense benefit?
5 A. Typically, yes.	5 A. Correct.
6 Q. And this says that, if the acquisition	6 Q. And there was a medical care coordination
7 cost was less than \$40 per new enrollee,	7 benefit?
8 HealthExtras and American Express would share the	8 A. Correct.
9 difference between the actual acquisition cost and	9 Q. Is there any other benefits that were part
10 \$40. Do you see that?	10 of this that you know of?
11 A. Yes.	11 A. Not that I can recall.
12 Q. Did that happen in practice, do you know?	12 Q. So with respect to the \$1.5 million
13 A. No.	13 Accidental Disability Plan, a certain premium was
14 Q. It didn't happen?	14 charged per enrollee by the underwriter?
15 A. No.	15 A. Correct.
16 Q. Is that because the acquisition cost was	16 Q. Do you recall what that premium was?
17 not less than \$40 per new enrollee?	17 A. It varied over time.
18 A. Correct.	18 Q. Do you know what the range was?
19 Q. Number 10 talks about the disability	19 A. How much coverage?
20 insurance fee. Do you see that? What is a	20 Q. For the 1.5 million coverage.
21 disability insurance fee?	21 A. I believe it may have been somewhere close
22 A. American Express wrote this agreement. I	22 to \$4.
Page 71	Page 73
1 believe that they are referring to the fee that was	1 Q. \$4 per month?
2 payable to the insurance carrier for disability	2 A. Correct.
3 insurance.	3 Q. How about the loss of life and
4 Q. So that would be the premiums? Is that	4 dismemberment premium? Do you recall what that was?
5 the same as the premium?	5 A. I don't.
6 A. Correct.	6 Q. It would have been less than \$4?
7 Q. And then this indicates that, if the	7 MR. PINTO: Objection.
8 premium ended up being less than \$27 per enrollee,	8 BY MR. DONIUS:
9 per -- I'm sorry -- per enrollee -- let me start	9 Q. Is that true?
10 again. If the disability insurance fee per enrollee	10 A. I don't remember.
11 is less than \$27 per million dollars of coverage,	11 Q. And what about the \$2,500 emergency
12 than HealthExtras and American Express will split	12 accident and sickness medical expense benefit? Do
13 the difference 50 percent to American Express and	13 you recall what premium was attributable to that?
14 50 percent to HealthExtras. Did that happen in	14 A. I don't.
15 practice?	15 Q. Again, that would have been less than \$4?
16 A. No.	16 MR. PINTO: Objection. She said she
17 Q. And was that again because the target of	17 didn't recall.
18 \$27 per million dollars of coverage per enrollee was	18 MR. DONIUS: I know she didn't recall, but
19 never, it was never less than that?	19 she recalls, for instance, that it was less than
20 A. Correct.	20 \$100; true?
21 Q. Now, this plan that we talked about and is	21 THE WITNESS: I believe it was, but I
22 described in the benefit description plan, had the	22 would be guessing. I don't remember.

19 (Pages 70 to 73)

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<p style="text-align: right;">Page 86</p> <p>1 A. I do believe that there was a report that 2 provides this information. 3 Q. What about the Subsection E that talked 4 about the number of enrollees that canceled their 5 enrollment? Was an attrition report created? 6 A. I believe that this is also accomplished 7 through the file exchange that I described earlier. 8 Q. What about with respect to HealthExtras' 9 own evaluation of the success of this program? Did 10 you create attrition reports to see, to summarize 11 how many people were leaving the program? 12 A. There could be. I don't remember. There 13 aren't any reports that I can recall that provide 14 this exact information. 15 Q. What about Subsection F that talks about 16 the claim report grouped by individual certificate 17 holder? Was that a type of report created by 18 HealthExtras? 19 A. No. 20 Q. Did HealthExtras have access to the type 21 of information described in Subsection F? 22 A. No.</p>	<p style="text-align: right;">Page 88</p> <p>1 BY MR. DONIUS: 2 Q. When I say with respect to the Accidental 3 Disability Plan, for this question I'm referring 4 specifically to the disability component of it. Did 5 you have any access to the loss ratio with respect 6 to the disability component of the plan? 7 A. Permanent disability plan within the 8 American Express Accidental Disability Plan? 9 Q. Yes. 10 A. No. 11 Q. I'm going to go ahead to Section 13, 12 Section 13B. Do you see where it says "HealthExtras 13 represents, warrants and covenants that the performance 14 of obligations under this agreement in connection 15 with the disability plan complies and will comply 16 with all applicable federal, state, local and 17 foreign laws, regulations, including, but not 18 limited to fair trade and advertising laws and 19 regulations." Do you see that? 20 A. Yes. 21 Q. Did you understand it to be part of 22 HealthExtras' responsibility to comply with all such</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. Do you know why it was listed here as a 2 part of the agreement? 3 A. Again, from my recollection of this is 4 that Reliance National, the original underwriter of 5 the permanent total disability benefit for this 6 program, I think they had been agreeable to 7 providing this information to American Express, but 8 subsequent to this the insurance carriers were 9 changed to Federal Insurance Company, and Federal 10 did not provide this level of claim detail to 11 HealthExtras or American Express. 12 Q. With respect to Subsection F, the last 13 part that talks about a report recapping in detail 14 the year-to-date loss ratio, did you ever have 15 access at HealthExtras to the loss ratio in 16 connection with this American Express disability 17 plan? 18 MR. PINTO: At any time? With either 19 underwriter? 20 MR. DONIUS: Yeah. 21 THE WITNESS: Not with respect to the 22 Accidental Disability Plan.</p>	<p style="text-align: right;">Page 89</p> <p>1 laws and regulations? 2 MR. PINTO: Objection. 3 THE WITNESS: I understood it was our 4 responsibility to make sure that we provided all 5 materials to the insurance carrier as was customary 6 to insure the materials were compliant with all the 7 applicable federal, state, local and foreign laws 8 and regulations and the fair trade and advertising 9 laws and regulations. 10 BY MR. DONIUS: 11 Q. But with respect to HealthExtras' 12 performance of its obligations, did you understand 13 those, that HealthExtras' obligations were to be 14 performed in accordance with the laws and 15 regulations listed? 16 MR. PINTO: Objection. 17 THE WITNESS: Again, I think the intent is 18 that HealthExtras is responsible for insuring these 19 things, and we accomplish that through submitting 20 all the materials to the insurance company. We were 21 required to do so. 22 MR. DONIUS: Obviously, I saw her bring in</p>

23 (Pages 86 to 89)

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<p style="text-align: right;">Page 114</p> <p>1 A. Correct.</p> <p>2 Q. What does the supplemental refer to?</p> <p>3 A. Supplemental benefits are what I described</p> <p>4 earlier at the beginning of the deposition, that</p> <p>5 they are programs of insured and uninsured benefits</p> <p>6 marketed by various parties to their membership.</p> <p>7 Q. But just in the name of it supplemental,</p> <p>8 why are they called supplemental benefits?</p> <p>9 A. I didn't personally label it as such, but</p> <p>10 I would imagine it's because the types of benefits</p> <p>11 that are included there are typically supplementing</p> <p>12 other insurance products or noninsurance products</p> <p>13 that you have there.</p> <p>14 Q. I'm going to show you a letter that's</p> <p>15 dated October 5, 1999 and ask you again if you</p> <p>16 recognize that.</p> <p>17 A. Yes.</p> <p>18 Q. What do you recognize that to be?</p> <p>19 A. This was a letter between Federal</p> <p>20 Insurance Company HealthExtras and the Sklover Group</p> <p>21 that generally outlined the intent of the working</p> <p>22 relationship between the three parties.</p>	<p style="text-align: right;">Page 116</p> <p>1 really served as the basis for the first payment of</p> <p>2 enrollees that would be converted over from</p> <p>3 Reliance.</p> <p>4 Q. And was it, in essence, to insure that</p> <p>5 Chubb would receive premiums for at least a certain</p> <p>6 amount of enrollees?</p> <p>7 MR. PINTO: Objection.</p> <p>8 THE WITNESS: Can you ask me the question</p> <p>9 again?</p> <p>10 BY MR. DONIUS:</p> <p>11 Q. Yes. The only payments that Chubb was</p> <p>12 going to get out of this disability plan program</p> <p>13 were insurance premiums; is that right?</p> <p>14 A. Correct.</p> <p>15 Q. Was this, in essence, an advance payment</p> <p>16 of the insurance premiums?</p> <p>17 A. Yes.</p> <p>18 Q. And if Chubb, if you didn't enroll enough</p> <p>19 people to equal \$100,000 premium, Chubb under this</p> <p>20 agreement was not going to refund any money to you?</p> <p>21 A. I don't know because I was not personally</p> <p>22 involved in the negotiation.</p>
<p style="text-align: right;">Page 115</p> <p>1 Q. And, as far as you know, was this the</p> <p>2 operative document with respect to that agreement,</p> <p>3 or was it formalized in a more formal contract at</p> <p>4 some point?</p> <p>5 A. It served as the basis for sometime, but</p> <p>6 it was eventually formalized further.</p> <p>7 Q. Okay. Now, with respect to this document</p> <p>8 again the first paragraph talks about HealthExtras</p> <p>9 developing a series of health and disability</p> <p>10 programs endorsed by Christopher Reeve. Do you see</p> <p>11 that?</p> <p>12 A. I see it.</p> <p>13 Q. Okay. And jumping down -- I'm sorry --</p> <p>14 jumping down to paragraph five, it says, "An initial</p> <p>15 deposit of 100,000 shall be paid to Chubb, and</p> <p>16 future amounts due Chubb may be applied against this</p> <p>17 deposit."</p> <p>18 A. Mm-hmm.</p> <p>19 Q. Do you have an understanding as to why</p> <p>20 Chubb was getting a payment of \$100,000?</p> <p>21 A. I believe it was a prepayment just</p> <p>22 demonstrating the intent to partner with them that</p>	<p style="text-align: right;">Page 117</p> <p>1 Q. But, in any event, if and when premiums</p> <p>2 started to become due, it would, you would be</p> <p>3 credited, HealthExtras and the other parties would</p> <p>4 be credited for the amounts already paid?</p> <p>5 A. Yes.</p> <p>6 MR. DONIUS: Can we have that document</p> <p>7 marked as the next exhibit, please?</p> <p>8 (Ficklin Exhibit No. 11, 10/5/99 letter,</p> <p>9 was marked for identification and retained by</p> <p>10 counsel.)</p> <p>11 BY MR. DONIUS:</p> <p>12 Q. Show you another document. This one is</p> <p>13 dated January 1, 2003 and it's entitled the</p> <p>14 "Administrative and Marketing Services Agreement"</p> <p>15 and ask you if you recognize that.</p> <p>16 A. Yes.</p> <p>17 Q. And was this the document that became the</p> <p>18 more formal contract between Federal Insurance</p> <p>19 Company, HealthExtras and Sklover Group from, I</p> <p>20 guess as of January 1, 2003?</p> <p>21 A. Yes, although it is lacking a few</p> <p>22 exhibits.</p>

30 (Pages 114 to 117)

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Joanna Ficklin

<p style="text-align: right;">Page 126</p> <p>1 Q. Do you know who, if anyone, from 2 HealthExtras had any graphic design input on this 3 document?</p> <p>4 A. I don't believe we had a graphic designer 5 when this piece was developed.</p> <p>6 Q. In some of the documents I've seen people 7 refer to things as creative. They kind of use it as 8 a noun as if it's a thing. Would this come in as, 9 this document that's before you, is this something 10 that people would refer to as creative?</p> <p>11 A. It's possible, yes.</p> <p>12 MR. PINTO: I'd just like to note for the 13 record this document does have two sides. The 14 witness has been answering all these questions from 15 the front of it, and I don't know to what extent her 16 answers apply to the entire document.</p> <p>17 BY MR. DONIUS:</p> <p>18 Q. Did any of the answers you've had so far 19 with respect to this document differ with respect to 20 the back side?</p> <p>21 A. Yes.</p> <p>22 Q. How so?</p>	<p style="text-align: right;">Page 128</p> <p>1 or didn't wish to mislead any potential purchaser 2 regarding the nature of the product offered; true?</p> <p>3 MR. PINTO: Objection to the form of the 4 question. I question whether the witness can speak 5 to the company's intent. I understand she's here as 6 a 30(b)(6) witness, and she can certainly report 7 facts that the company knows. I don't know about -- 8 well, I think she answered. Did she answer already? 9 She can answer, if she is able.</p> <p>10 THE WITNESS: Can you ask me the question 11 again?</p> <p>12 BY MR. DONIUS:</p> <p>13 Q. Well, I didn't think it was controversial. 14 I assume you're going to take the position that 15 HealthExtras did not intend to mislead anybody 16 regarding the nature of the product that was being 17 offered in connection with this mailing?</p> <p>18 A. Correct.</p> <p>19 Q. With respect to the type size of the 20 important disclosure, did you have any concerns that it would be difficult for purchasers to read the print?</p>
<p style="text-align: right;">Page 127</p> <p>1 A. The important disclosure and the 2 additional benefit descriptions were dictated by the 3 insurance carrier, the benefit provider, so the 4 marketing agency would not have developed the 5 language included.</p> <p>6 Q. Now, we'll get into this a little bit 7 later, but was the important disclosure so-called 8 language that was utilized on this document, had 9 that been taken from other marketing programs?</p> <p>10 A. It is the disclosure provided to us by the 11 insurance carrier.</p> <p>12 Q. By Chubb in this case?</p> <p>13 A. For this particular mail piece this was 14 provided to us by Chubb, correct.</p> <p>15 Q. Well, I guess I'll ask you later. All 16 right. When -- did HealthExtras consider it 17 important that this document accurately describe the 18 plan being offered?</p> <p>19 A. Yes.</p> <p>20 MR. PINTO: Objection.</p> <p>21 BY MR. DONIUS:</p> <p>22 Q. And, obviously, HealthExtras didn't intend</p>	<p style="text-align: right;">Page 129</p> <p>1 A. I believe that there are insurance 2 guidelines, insurance marketing guidelines that 3 Chubb adhered to in terms of things such as font 4 size which were not within our, our area. They 5 reviewed the piece for things such as the one that 6 you just described.</p> <p>7 Q. American Express was also involved in 8 looking at font size; is that right?</p> <p>9 A. I would imagine so. They reviewed the 10 piece, but I cannot tell you -- they would have 11 reviewed it for purposes of their branding and the 12 message to the customer. I wouldn't be able to tell 13 you all the specific things that they may have 14 reviewed internally.</p> <p>15 Q. And do you believe that as written this 16 document effectively communicates the terms and 17 conditions of the policy to the potential purchaser?</p> <p>18 MR. PINTO: Objection to the form of the 19 question. Could you read that back, please? (The reporter read back as requested.)</p> <p>20 THE WITNESS: I'm sorry. Can you repeat 21 the question again now? I was reading.</p>

33 (Pages 126 to 129)

Joanna Ficklin

<p>1 MR. DONIUS: Please. Thank you.</p> <p>2 (Ficklin Exhibit No. 15, Accident</p> <p>3 Disability Plan from American Express, Program</p> <p>4 Summary, was marked for identification and retained</p> <p>5 by counsel.)</p> <p>6 BY MR. DONIUS:</p> <p>7 Q. Do you know why, how it came about that</p> <p>8 Federal was going to be replaced by AIG?</p> <p>9 A. Yes.</p> <p>10 Q. How did that come about?</p> <p>11 A. My recollection is that Federal had</p> <p>12 indicated a higher claims experience than that which</p> <p>13 they had anticipated, and in order to continue with</p> <p>14 Federal they would have had to increase the cost</p> <p>15 efficiently that it would have impacted the</p> <p>16 enrollees, and then the broker of record identified</p> <p>17 a different carrier that could continue the program</p> <p>18 in its current form.</p> <p>19 Q. It was a pricing issue, as you understood</p> <p>20 it, from the insurance side?</p> <p>21 A. That's my recollection.</p> <p>22 Q. This is another document that was provided</p>	<p>Page 138</p> <p>1 this policy?</p> <p>2 A. I do not.</p> <p>3 Q. Do you know anything about the obligations</p> <p>4 of the trustees?</p> <p>5 A. I do not. I believe that this was</p> <p>6 something that was set up by Federal Insurance</p> <p>7 Company.</p> <p>8 Q. When Reliance was the underwriter on this</p> <p>9 policy, there was a similar trust?</p> <p>10 A. I don't remember.</p> <p>11 Q. Do you know if all the supplemental</p> <p>12 accidental disability programs that HealthExtras has</p> <p>13 been involved in involve a trust?</p> <p>14 A. I don't think so.</p> <p>15 Q. So I take it from an earlier answer you</p> <p>16 don't know who the trust beneficiaries are, for</p> <p>17 instance?</p> <p>18 A. No.</p> <p>19 Q. Or the role of trustees?</p> <p>20 A. No.</p> <p>21 Q. Do you know if trustees were compensated</p> <p>22 for serving as trustees?</p>
<p>Page 139</p> <p>1 me today that's a letter, a copy, I guess, of a</p> <p>2 letter to Altagracia Peguero from Anne Schepp,</p> <p>3 Insurance Officer, American Express. I ask you to</p> <p>4 just take a moment to look at that.</p> <p>5 A. Yes.</p> <p>6 Q. Is that a copy of the document that you</p> <p>7 believe would have been sent to Altagracia Peguero</p> <p>8 with the so-called welcome kit?</p> <p>9 A. That is correct.</p> <p>10 MR. DONIUS: Can we have that marked as</p> <p>11 the next exhibit, please?</p> <p>12 (Ficklin Exhibit No. 16, Letter to Ms.</p> <p>13 Peguero from Ms. Schepp, was marked for</p> <p>14 identification and retained by counsel.)</p> <p>15 MR. PINTO: Can I ask for just three</p> <p>16 minutes?</p> <p>17 (Whereupon, a short recess was taken.)</p> <p>18 BY MR. DONIUS:</p> <p>19 Q. I want to show you again what's been</p> <p>20 marked as Exhibit 3 and just draw your attention to</p> <p>21 the third page, and it talks of a trust. Do you</p> <p>22 know why a trust was established in connection with</p>	<p>Page 141</p> <p>1 A. No, but I don't believe so.</p> <p>2 Q. To your knowledge, any payment to them</p> <p>3 didn't come out of the escrow accounts that you're</p> <p>4 aware of?</p> <p>5 A. No.</p> <p>6 Q. I'm just going to show you a document</p> <p>7 that's, it's titled "Affidavit of Joanna Ficklin in</p> <p>8 Support of Defendant, Federal Insurance Company's</p> <p>9 Reply Memorandum." And could you take a moment to</p> <p>10 review your affidavit?</p> <p>11 A. Okay.</p> <p>12 Q. On paragraph five and six you indicate</p> <p>13 that, when a new member enrolls in our program, a</p> <p>14 welcome packet is assembled and sent out to the</p> <p>15 enrollee.</p> <p>16 A. Correct.</p> <p>17 Q. Who performs that function?</p> <p>18 A. We have an automated process in terms of,</p> <p>19 when a new enrollee is entered into the enrollment</p> <p>20 database, the system automatically selects what we</p> <p>21 call a welcome packet record, and then we have a</p> <p>22 fulfillment department that downloads the</p>

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<p style="text-align: right;">Page 142</p> <p>1 information daily, prints the materials and mails 2 them to the customers.</p> <p>3 Q. At some point, well, attached to your 4 affidavit there's some, looks like computer records, 5 one of which is, second page of Exhibit 1 indicates 6 that the welcome package was processed on 7/16/2002.</p> <p>7 A. Yes.</p> <p>8 Q. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And who would make the entry indicating 11 that it had been processed?</p> <p>12 A. I believe it's the person who has 13 downloaded and processed the file.</p> <p>14 Q. And that person downloads it and literally 15 puts the materials in an envelope and mails it?</p> <p>16 A. Correct.</p> <p>17 Q. I guess you also indicated there was some 18 process that was supposed to be followed if a 19 package was returned?</p> <p>20 A. Right.</p> <p>21 Q. As undelivered?</p> <p>22 A. Correct. We have a process for that.</p>	<p style="text-align: right;">Page 144</p> <p>1 this plan, they identify themselves as being 2 American Express?</p> <p>3 A. I believe they answer thank you for 4 calling the American Express Accidental Disability 5 Plan or something of the like.</p> <p>6 Q. But, in other words, they don't identify 7 themselves as HealthExtras?</p> <p>8 A. Only if somebody were to ask do you work 9 for American Express. Then they would explain that 10 they worked for a company that services the American 11 Express Accidental Disability Plan.</p> <p>12 Q. But, unless asked, the only reference is 13 to American Express?</p> <p>14 A. I believe it's an automated greeting that 15 includes the name of the program. Otherwise, they 16 just identify themselves by name.</p> <p>17 Q. In fact, can we have the affidavit marked 18 as the next exhibit, please?</p> <p>19 (Ficklin Exhibit No. 17, Affidavit of 20 Joanna Ficklin, was marked for identification and 21 retained by counsel.)</p> <p>22 BY MR. DONIUS:</p>
<p style="text-align: right;">Page 143</p> <p>1 Q. And what's that process?</p> <p>2 A. The, any return mail is dispersed amongst 3 the different customer service and fulfillment 4 staff, and they enter a note into what we call the 5 F9 notes. It's a portion of the database that 6 provides notes for a particular enrollee's record, 7 and they enter a notation, a return mail. They then 8 attempt to file -- I'm sorry -- to find a new 9 address for that individual. They try to make an 10 outbound call. They make attempts to try to 11 redirect the mail.</p> <p>12 Q. Now, in any of the welcome materials, 13 welcome kit materials, are there any phone numbers 14 listed to call if you have any questions or problems 15 that you recall?</p> <p>16 A. Yes.</p> <p>17 Q. And those numbers, if one were to dial 18 that number, it would ring where?</p> <p>19 A. To the HealthExtras Customer Service 20 Center.</p> <p>21 Q. But, when the HealthExtras Customer 22 Service Center answers the phone in connection with</p>	<p style="text-align: right;">Page 145</p> <p>1 Q. All right. I'm going to show you a large 2 packet of materials. These were provided to me by 3 your attorney, and they are numbered 1 through 91. 4 Just ask you to just quickly flip through those and 5 see if you generally recognize those. I'll ask you 6 more specifically about them.</p> <p>7 A. Okay.</p> <p>8 Q. All right. The first page is a letter 9 dated November 5, 1999 from Rona Leffler to Miss 10 Camille Hoffmiller?</p> <p>11 A. Yes.</p> <p>12 Q. Is that right? What was Rona Leffler's 13 position at HealthExtras?</p> <p>14 A. I believe in 1999 she was the Director of 15 Supplemental Benefits.</p> <p>16 Q. And you had just started working there a 17 few months before; is that right?</p> <p>18 A. Correct.</p> <p>19 Q. In this it says, "I've enclosed a variety 20 of HealthExtras marketing materials that have been 21 updated to reflect the Chubb language disclosure." 22 Do you see that?</p>

37 (Pages 142 to 145)

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<p style="text-align: right;">Page 146</p> <p>1 A. Yes.</p> <p>2 Q. Do you recall what marketing materials 3 she's talking about?</p> <p>4 A. It would likely be different direct mail 5 pieces and things of that nature.</p> <p>6 Q. Now, Chubb was at this time just starting 7 its involvement in the Accidental Disability Plan 8 from American Express; right?</p> <p>9 A. This is before they were involved specific 10 to American Express. They were just starting to be 11 involved with HealthExtras in general as a whole.</p> <p>12 Q. Okay. It says that "Enclosed are inserts, 13 direct mail pieces, telemarketing scripts and a 14 website printout."</p> <p>15 A. Correct.</p> <p>16 Q. So it appears these were things that 17 HealthExtras already had in place before Chubb got 18 involved?</p> <p>19 A. Correct.</p> <p>20 Q. If you turn to the next page, it appears 21 to be, well, it's a copy of the document that has 22 "Financial Security" at the top. Do you see that?</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. So this, so this document had been in the 2 works before Chubb got involved?</p> <p>3 A. Correct.</p> <p>4 MR. PINTO: Objection to the form.</p> <p>5 BY MR. DONIUS:</p> <p>6 Q. And do you recall, were you even here at 7 HealthExtras when this document was first created?</p> <p>8 A. Yes.</p> <p>9 Q. You were here?</p> <p>10 A. Yes.</p> <p>11 Q. So some, to me that indicates that 12 somewhere between July of 1999 and November of 1999 13 this document was created?</p> <p>14 A. Correct.</p> <p>15 Q. And, at that point in time, had you 16 entered, had HealthExtras entered into the agreement 17 with American Express?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. The marketing agreement we looked 20 at earlier was signed on the 17th of September, 21 1999. Had efforts been made to create documents, 22 potential promotional materials prior to the signing</p>
<p style="text-align: right;">Page 147</p> <p>1 A. Yes.</p> <p>2 Q. It's hard for me to tell, but does this 3 appear to be one of the enclosures to the 4 November 5, '99 letter?</p> <p>5 A. It was.</p> <p>6 Q. It was?</p> <p>7 A. Mm-hmm.</p> <p>8 Q. That's a yes. So this document had been 9 created in advance of November 5 of 1999?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. And this is, we talked earlier 12 about the document that's marked as --</p> <p>13 MR. PINTO: Four.</p> <p>14 BY MR. DONIUS:</p> <p>15 Q. -- Exhibit 4. Is this the same as 16 Exhibit 4, as far as you know?</p> <p>17 A. I would have to do a thorough comparison, 18 but they are generally similar.</p> <p>19 Q. Okay. They are generally similar, but I 20 can see differences in the enrollment form, for 21 instance.</p> <p>22 A. Correct.</p>	<p style="text-align: right;">Page 149</p> <p>1 of the marketing agreement?</p> <p>2 A. Not that I recall. It started with the 3 marketing agreement.</p> <p>4 Q. Okay. So just so -- I'm sorry if I asked 5 it before. Just so the record is clear, this 6 document which is under the Number 2 of this latest 7 group of documents would have been created before 8 Federal had come on board?</p> <p>9 A. Correct.</p> <p>10 Q. Had this document, a document like this or 11 a very similar document been used with respect to 12 any programs with Reliance National that you know 13 of?</p> <p>14 A. Yes.</p> <p>15 Q. It had?</p> <p>16 A. Yes.</p> <p>17 Q. And that would have been with a different 18 financial institution other than American Express?</p> <p>19 A. And with American Express.</p> <p>20 Q. And with American Express? Had you worked 21 with American Express before this Accidental 22 Disability Plan?</p>

38 (Pages 146 to 149)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ALTAGRACIA J. PEGUERO)	CIVIL ACTION No. 05-10995-RCL
Plaintiff,)	
v.)	
AMERICAN EXPRESS COMPANY, And HEALTHEXTRAS, INC.)	RULE 26(a)(2)(B) REPORT OF TIM RYLES, Ph.D.
Defendants.)	

A. Complete Statement of all opinions to be expressed and the basis and reasons therefor.

My name is Tim Ryles and I have personal knowledge of the matters set forth in this report filed on behalf of Plaintiff Altagracia J. Peguero. Counsel for Plaintiff asked me to review certain documents and express opinions as to whether defendants American Express Company and HealthExtras, Inc. acted contrary to certain sales and advertising standards in marketing and administering the accidental disability policy purchased by the Plaintiff. The opinions stated in this report are based upon my

District of Columbia, the model has been adopted by all jurisdictions except Hawaii, Minnesota, and Montana. The Massachusetts version appears at 211 Code of Massachusetts Regulations Sections 40.1 to 40.16 "Marketing of Insured Health Plans." Where the Little FTC acts apply to insurance, as in Massachusetts, the NAIC Model reinforces and provides additional guidelines for insurers and regulators.

Under the Model Regulation, "Advertisement" includes descriptive literature used in direct mail solicitation (as in this case). Irrespective of the source of an advertisement, regulators hold insurers liable for compliance with the regulation.

HOW DEFENDANTS DECEIVED PEGUERO

The Trust Arrangement. Plaintiff Peguero signed up for an accidental disability policy in response to a mail solicitation from American Express on or about the time of August, 2002. It is labeled "Accidental Disability Plan *from* American Express." (Italics appear in original copy.) The Master Policy under which Mrs. Peguero enrolled is issued to Citizens Bank of Rhode Island, as Trustee for G.A.R.D. Trust for the Account of Health Extras /American Express. The Bank of Newport became trustee on 1/1/02. According to the Master Policy, the Master Policyholder is the entity responsible for "the collection and remittance of premium." Billing for the premium, however, is direct by American Express as part of the monthly credit card statement. There is no indication that any funds flow through the trust or that the trust satisfies the legal conditions for a legitimate trust. This raises an important issue as to whether the trust actually exists or whether this marketing scheme is just another bogus trust arrangement, not uncommon to some insurer marketing practices. Should future evidence show that the trust is, indeed, bogus, I would characterize the marketing scheme as fraudulent and deceptive from the outset.

The Solicitation. In the sample solicitation provided to me, Anne Schepp, the Insurance Officer for American Express, highlights in bold print at the upper right hand side of the advertisement, the following representation: